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Natolin

# Increasing transparency of the new EU economic governance: The role of the European Parliament

Sergio Marx



DEPARTMENT OF  
EUROPEAN INTERDISCIPLINARY STUDIES

Natolin Best Master Thesis

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# Increasing transparency of the new EU economic governance: The role of the European Parliament

Sergio Marx

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EUROPEAN INTERDISCIPLINARY STUDIES

Natolin Best Master Thesis

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COLLEGE OF EUROPE NATOLIN CAMPUS

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## Abbreviations

|              |  |
|--------------|--|
| <b>AFCO</b>  | Committee on Constitutional Affairs                    |
| <b>ALDE</b>  | Alliance of Liberals and Democrats for Europe          |
| <b>BTS</b>   | Binding Technical Standards                            |
| <b>CRDIV</b> | Capital Requirement Directive                          |
| <b>CRR</b>   | Capital Requirement Regulation                         |
| <b>EBA</b>   | European Banking Authority                             |
| <b>EBF</b>   | European Banking Federation                            |
| <b>EBIC</b>  | European Banking Industry Committee                    |
| <b>ECB</b>   | European Central Bank                                  |
| <b>ECON</b>  | Committee on Economic and Monetary Affairs             |
| <b>ECR</b>   | European Conservatives and Reformists                  |
| <b>EDP</b>   | Excessive Deficit Procedure                            |
| <b>EFD</b>   | Europe of Freedom and Democracy                        |
| <b>EFSF</b>  | European Financial Stability Facility                  |
| <b>EFSM</b>  | European Financial Stabilisation Mechanism             |
| <b>EGP</b>   | European Green Party                                   |
| <b>EIOPA</b> | European Insurance and Occupational Pensions Authority |
| <b>EIP</b>   | Excessive Imbalance Procedure                          |
| <b>EMU</b>   | Economic and Monetary Union                            |
| <b>EP</b>    | European Parliament                                    |
| <b>EPFSF</b> | European Parliament Financial Services Forum           |
| <b>EPG</b>   | European Political Groups                              |

|                   |   |
|-------------------|---|
| <b>EPP</b>        | European People's Party                                     |
| <b>ESA</b>        | European Supervisory Authority                              |
| <b>ESBG</b>       | European Savings and Retail Banking Group                   |
| <b>ESFS</b>       | European System of Financial Supervisors                    |
| <b>ESM</b>        | European Stability Mechanism                                |
| <b>ESMA</b>       | European Securities and Markets Authority                   |
| <b>ESRB</b>       | European Systemic Risk Board                                |
| <b>EU</b>         | European Union  |
| <b>GDP</b>        | Gross Domestic Product                                      |
| <b>Greens/EFA</b> | The Greens/European Free Alliance                           |
| <b>GUE/NGL</b>    | European United Left/Nordic Green Left                      |
| <b>IMF</b>        | International Monetary Fund                                 |
| <b>JCESA</b>      | Joint Committee of European Supervisory Authorities         |
| <b>LTRO</b>       | Long Term Refinancing Operations                            |
| <b>MIP</b>        | Macroeconomic Imbalance Procedure                           |
| <b>MTO</b>        | Medium-Term budgetary Objective                             |
| <b>OJ</b>         | Official Journal of the European Union                      |
| <b>OLP</b>        | Ordinary Legislative Procedure                              |
| <b>OMT</b>        | Outright Monetary Transactions                              |
| <b>PES</b>        | Party of European Socialists                                |
| <b>RQMV</b>       | Reverse Qualified Majority Voting                           |
| <b>S&amp;D</b>    | Progressive Alliance of Socialists and Democrats            |
| <b>SGP</b>        | Stability and Growth Pact                                   |
| <b>SSM</b>        | Single Supervisory Mechanism                                |
| <b>TEU</b>        | Treaty on the European Union                                |
| <b>TFEU</b>       | Treaty on the Functioning of the European Union             |
| <b>TI EU</b>      | Transparency International EU Liaison Office                |
| <b>TPF</b>        | Transnational Party Federation                              |
| <b>TSCG</b>       | Treaty on Stability, Coordination and Governance in the EMU |

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## Abstract

The new EU economic governance has introduced power shifts between the national and the EU level and between discretion and delegation or rules. This evolution of power practice has to be accountable in order to remain legitimate, especially in the EMU. Transparency allows for the control of the agent (the institution) by the principal (the public) and increases accountability.

The aim of this thesis is to assess to which extent the European Parliament has been able to pass transparency-enhancing amendments through the legislative process relating to the new EU economic governance and for which kind of power shifts. Firstly, the classification of the power shifts on which the EP has co-decided is assessed. Secondly, successful EP amendments on legislation relating to these power shifts are identified by comparing EP reports to the final legislative act. Thirdly, thanks to the calculation of transparency ratios, the thesis reveals on which kind of power shifts the EP has been able to achieve higher levels of transparency. Fourthly, these results are interpreted by trying to identify the influence of EP party politics, the Council, internal and external experts and lobbyists on the content of the legislation.

The first part shows that the power shifts on which the EP co-decided consisted of more diagonal shifts from discretion at the national level to delegation or rules at the EU level and of more horizontal shifts at the EU level than previously assessed. The second part reveals that the allocation of successful EP transparency amendments varies strongly but that it is centred on parts of the ESFS, of the Six Pack and on the SSM. The third part shows that the EP has been able to pass these amendments more frequently in case of diagonal or horizontal power shifts. The fourth part tries to pinpoint the reasons for these results by developing several hypotheses on the role of bargaining at the EP, on European political affiliations at the Council, and on the influence of internal and external players such as experts and, especially in the case of the SSM, of lobbyists. However, the lack of sufficient empirical data prevents formally confirming or invalidating the hypotheses.

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In conclusion, this thesis argues that the EP has been able to make substantial transparency gains on financial supervision legislation but that shortcomings remain in aspects of fiscal and macroeconomic policy legislation, which may arise from the willingness of both co-legislators to increase compliance of the Member States. Also, amendments on diagonal and horizontal power shifts have been more successfully passed than on vertical shifts to discretion, denoting an eventual readiness of the Council to accept transparency when it does not target its own activities.

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## The Natolin Best Masters' Theses Series

PROF. NANETTE NEUWAHL

DIRECTOR OF STUDIES

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The “Natolin Best Master’s Thesis” series showcases the best Masters’ Theses produced by the students of the Natolin campus of the College of Europe in any given year.

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Le marché unique européen, la gouvernance et les relations extérieures sont des points majeurs de l'activité d'enseignement. Reconnu pour l'excellence de ses programmes en études européennes, le campus de Natolin du Collège d'Europe s'est engagé à améliorer ses activités de recherche, ainsi qu'à encourager ses étudiants les mieux prédisposés dans une carrière d'enseignement. La chaire de civilisation européenne du parlement européen *Bronislaw Geremek* et la chaire de politique de voisinage européen en particulier, encouragent la recherche sur l'histoire et la civilisation européenne, respectivement, et sur le voisinage oriental et méridional de l'Europe .

Le programme EIS se termine par la rédaction d'une importante thèse de Master. Au Collège d'Europe, chaque étudiant doit, pour obtenir son diplôme, produire une thèse dans le cadre de l'un des cours qu'il a suivi au cours de son année d'enseignement. La recherche doit être originale et liée aux politiques et aux affaires européennes, sur un sujet choisi par l'étudiant, ou sur proposition du professeur chargé de la thèse. Souvent, l'étudiant choisit un sujet qui est important pour le déroulement ultérieur de sa carrière. Les thèses de master sont écrites en français et ou en anglais, les deux langues officielles du Collège d'Europe, bien souvent une langue différente de la langue maternelle de l'étudiant.

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## Introduction

### POWER SHIFTS IN THE NEW EU ECONOMIC GOVERNANCE

In order to tackle the financial and economic turmoil triggered by the outburst of the financial crisis in 2007-2008, EU institutions adopted series of legislation and new practices which have developed the EU economic governance, the multilevel decision-making architecture of the EU for economic matters.

This new EU economic governance is recognizable in three fields of European policy: fiscal policy, through a higher coordination of budgetary and macroeconomic policies between Member States; financial policy, through an enhanced system of financial supervision at the EU level; and monetary policy, through the adoption of “non-conventional” measures by the European Central Bank (ECB).

These developments have implied power shifts in the economic governance structure of the EU which Frank Naert, following a simplified two axis model, classifies as “vertical shifts” on a vertical axis from the national level to the EU level of governance, or as “horizontal shifts” on a horizontal axis demarcating, on one hand, power by discretion from, on the other hand, delegation of power or rules. “Diagonal shifts” imply a shift on both axes.<sup>1</sup>

The EU democratic deficit has been widely described and discussed, notably by Andreas Follesdal and Simon Hix.<sup>2</sup> But the apparition of new economic governance mechanisms at higher or delegated levels of governance has raised concern among scholars about a possible increase of the democratic deficit. As noted by Jürgen Habermas, Wolfgang Streek has recognized the risk of an EU executive federalism, which would further undock national public spheres and parliaments from EU decision-making if, for

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1 Frank Naert, “The new EU economic governance: vertical and horizontal power shifts”, Conference Paper, EGPA Conference, 11-13 October 2013, Edinburgh, p. 17.

2 Andreas Follesdal, Simon Hix, “Why there is a democratic deficit in the EU: a response to Majone and Moravcsik”, in: *Journal of Common Market Studies*, Vol. 44, No. 3, 2006.

instance, the European Parliament (EP) is not accordingly strengthened.<sup>3</sup> More generally, Martino Maggetti also notes that the development of the regulatory state and regulatory capitalism may lead to a “weakening of the democratic quality of political systems”,<sup>4</sup> as a growing amount of powers are held by independent agencies which can “hardly rely on a strong stock of legitimacy”.<sup>5</sup>

On the other hand, the fact that the economic decision-making has partly shifted to a higher or delegated governance level may also lead to higher levels of credibility,<sup>6</sup> as decisions don’t remain the sole responsibility of governments which may push for expansionary or pro-cyclical policies while striving for reelection, following the “political business cycle”.<sup>7</sup> This is considered to be less so if policy choices are constrained by rules or delegated to agencies.<sup>8</sup> However, the question of accountability or transparency of these regulatory mechanisms remains.

Furthermore, as the Economic and Monetary Union (EMU) is more vulnerable than national policies to legitimacy crises due to its lack of “embeddedness” “within a settled polity”, an insufficient level of accountability may have more important consequences on its existence.<sup>9</sup>

## TRANSPARENCY, A LEGITIMACY-ENHANCING INSTRUMENT OF ACCOUNTABILITY

That is why a strengthening of accountability of decision-making processes is even more so required. Transparency is central to this purpose.

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3 Jürgen Habermas, “Demokratie oder Kapitalismus”, in: *Blätter für deutsche und internationale Politik*, No. 5, 2013, p. 59.

4 Martino Maggetti, “Legitimacy and Accountability of Independent Regulatory Agencies: A Critical Review”, in: *Living Reviews in Democracy*, Vol. 2, 2010.

5 Ibid.

6 Fabrizio Gilardi, Martino Maggetti, “Policy Credibility and Delegation of Regulatory Competencies to Independent Agencies: A Comparative Empirical Consideration”, in: *Journal of European Public Policy*, Vol. 9, No. 6, 2002, p. 8.

7 Alberto Alesina, Gerald D. Cohen, Nouriel Roubini, “Macroeconomic policy and elections in OECD countries”, in: *NBER Working Papers Series*, Working Paper No. 3830, Cambridge, 1992, p. 28.

8 Gilardi, op. cit., pp. 888-889.

9 Amy Verdun and Thomas Christiansen, “Policies, Institutions, and the Euro: Dilemmas of Legitimacy”, in: C. Crouch (ed.), *After the Euro: Shaping Institutions for Governance in the Wake of European Monetary Union* (1st edition), Oxford University Press, Oxford, 2000, p. 176.

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Indeed, as recalled by James P. Cross,<sup>10</sup> transparency has the potential to increase “the legitimacy of the decisions made”<sup>11</sup> and to “increase the probability that decision makers will be held accountable for decisions that deviate from the public interest”.<sup>12</sup> Also, by increasing publicity, transparency can have a “civilizing effect on negotiators”, which would then rather put forward the public interest than other interests.<sup>13</sup> This underlines a conception of control of the institutions and decision-makers by the wider public, a “competing” conception of civil society in opposition to a “cooperative” one.<sup>14</sup>

Mark Bovens’ concept of social accountability is here important to recall.<sup>15</sup> It is defined as “the moral obligation for public agencies to account for their performance to the public at large or to civil interest groups” and transparency is highly instrumental to its proper functioning.<sup>16</sup> Indeed, in order for citizens to actively scrutinize policy decisions, that is, act as effective “fire alarms”<sup>17</sup> they need access to relevant information. Alternatively, citizens need a directly elected forum, which takes-up the role of the citizenry by hearing relevant policymakers on their decisions and sets up effective channels for citizens to follow the scrutiny. We may also consider a more restrictive variant of social accountability in which public agencies do not only face a moral but also a legal obligation to account to the public at large. We may coin this concept “binding social accountability”.

Some scholars underline however, that too much transparency of decision-making processes may be detrimental. They have raised the issue that decision makers need a certain amount of secrecy in order to be able to take decisions.<sup>18</sup> They need a “room for

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10 James P. Cross, “Striking a pose: Transparency and position taking in the Council of the European Union”, in: *European Journal of Political Research*, No. 52, 2013, p. 292.

11 Juliet Lodge, “Transparency and Democratic Legitimacy”, in: *Journal of Common Market Studies*, Vol. 32, No. 3, 1994, p. 352.

12 Catharina Lindstedt, Daniel Naurin, “Transparency is not Enough: Making Transparency Effective in Reducing Corruption”, in: *International Political Science Review*, Vol. 31, No. 3, 2010, p. 313.

13 Daniel Naurin, *Deliberation behind closed doors: Transparency and lobbying in the European Union* (1<sup>st</sup> edition), ECPR Press, Colchester, 2007. As quoted in Cross, op. cit., p. 292.

14 Eva H. Heidbreder, “Civil society participation in EU governance”, in: *Living Reviews in European Governance*, Vol. 7, No. 2, 2012, p.6.

15 Mark Bovens, “Analysing and Assessing Accountability: A Conceptual Framework”, in: *European Law Journal*, Vol. 13, No. 4, 2007, p. 457.

16 Bovens, op. cit, p. 450.

17 Christopher Gandrud, Mark Hallerberg, *Supervisory transparency in the European banking union*, Bruegel Policy Contribution, No. 1, 2014, p. 4.

18 Dorothee Heisenberg, “The institution of ‘consensus’ in the European Union: Formal versus information decision-making in the Council”, in: *European Journal of Political Research*, Vol. 44, No. 1, 2005.

thought” in order to develop and discuss ideas. This is also applicable to policy measures dealing with sensitive data which may trigger systemic risk.

The challenge consists in reaching enough transparency in order to achieve legitimacy while still enabling enough room for decision-making.

In order to narrow down transparency as a concept, Mitchell’s definition of transparency as the availability of “regime relevant information”<sup>19</sup> is helpful. Settembri recognizes five distinct aspects allowing for more transparency.<sup>20</sup> Among these is the access to records of the decision-making process. We will focus on this point in the context of this research; however, it will be considered in a broad sense.

Indeed, access to records of the decision-making process will be primarily understood as the access to the very documents of the decision-making process but also the methods, techniques and rationales underlying the adoption of decisions.

Also, in case of the lacking of this aspect of transparency, the emphasis will be put on broader instruments of control of decision-making as the holding of hearings of the relevant personalities by the European Parliament, which is in this case used as a proxy for the wider public’s scrutiny. In this sense, “documents” are broadened to flow of information in any form.

## THE EP AS A TRANSPARENCY ADVOCATE

The aim of this thesis is, firstly, to identify the different types of power shifts (vertical, horizontal or diagonal) triggered by the new EU economic governance.

Secondly, to assess to which extent the EP, as the only directly elected EU institution, has introduced transparency to these power shifts, matching the concept of binding social accountability. This will be done by identifying the successful transparency-related amendments introduced in the relevant legislation, which will allow understanding in which type of power shifts the EP has been able to introduce most transparency-enhancing amendments.

Thirdly, the results of the first two parts will be summed up, allowing gaining useful insight from the aggregated results.

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19 Ronald B. Mitchell, “Sources of Transparency: Information Systems in International Regimes”, in: *International Studies Quarterly*, Vol. 42, 1998, p. 109.

20 Pierpaolo Settembri, “Transparency and the EU Legislator: ‘Let He Who is Without Sin Cast the First Stone’”, in: *Journal of Common Market Studies*, Vol. 43, No. 3, 2005, p. 640.

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Finally, the thesis will address the underlying reasons for these results, considering the role of EP party politics, political affiliation at the Council and external influence in the decision-making process.

This will allow to reveal the center of this work, that is, the nature of the EP's "added-value" in the legislative process, enabling (or not), and for which reasons, the transparency of shifting power in a multilevel system of governance, as the new EU economic governance.

## **METHODOLOGY**

For the purpose of Chapter I, we will consider the power shifts on which the EP had an impact, as identified by Frank Naert in the new EU economic governance. If necessary, we will discuss the adequacy of Naert's classification and suggest an alternative one. If power shifts not addressed by Naert are recognizable they will be added.

For the purpose of Chapter II, the European legislation relating to the new EU economic governance adopted through the ordinary legislative procedure (OLP) that is, through the involvement of the EP at an equal level with the Council of the EU, will be investigated. EP negotiation mandates on these legislative acts, as adopted by the competent EP Committee, will be considered and compared to the final legislation, in order to assess the Parliament's successful input regarding transparency. Due to empirical constraints, a quantitative approach will be used to assess the "transparency score" of each legislative act. Points will be ascribed per successfully adopted amendment. This approach may be seconded by a qualitative assessment if relevant.

For the purpose of Chapter III, the interrelation between the power shifts and the amount of transparency amendments will be analytically investigated by the calculation of ratios of amendments per power shift.

For the purpose of Chapter IV on the reasons for these results, we will firstly observe party politics inside the EP, especially at the light of the balance of power between the different political groups. We will consider afterwards the influence of the Council by observing its political preferences. Finally, external influence on the EP will be assessed by observing, among others, the role of experts and lobbyists in the specific case of the Single Supervisory Mechanism (SSM).





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## Chapter I. Power shifts in the new EU economic governance: an assessment

Using a simple governance model consisting of a national level and an EU level on the vertical axis and discretion and rules or delegation on the horizontal axis, it is possible to visualise the power shifts induced by the new EU economic governance.

Vertical shifts can be considered as addressing issues of allocation, redistribution and stabilisation.<sup>21</sup> This has been the case in the EU debt crisis in the context of the EMU. As budgetary plans were drafted at low level of governance, divergences occurred with spill-over effects, hence the tendency to shift budgetary powers to a higher level of governance towards fiscal federalism.

Horizontal shifts can be considered as addressing issues of credibility. As Naert observes, a “politician/government/regulator is credible when agents believe he will fulfil his promises. Credibility is needed when coercion is not an option for policy makers”.<sup>22</sup> This was the underlying rationale under the allocation of Euro area monetary policy to an independent central bank. The adoption of fiscal rules in the constitutions of Member States aims equally at increasing the credibility of a Member State’s policy.

Regarding the qualification of power shifts in this research, the emphasis should not be put on the institution executing the power but on the manner the power is executed. In this sense, a vertical power shift from discretion at the national level to discretion at the EU level should, for instance, not be necessarily seen as a shift from national governments to the Council, both discretionary institutions. Indeed, this discretionary power at the EU level may also be executed by an institution which is not necessarily considered as fully discretionary, because of being bound by a tight mandate in the context of a delegation, but which develops discretionary policies, such as the ECB with its “non-conventional”

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21 Richard A. Musgrave, *The Theory of Public Finance: A Study in Public Economy*, McGraw-Hill, New York, 1959. As quoted in Naert, op. cit., p. 3.

22 Ibid., p. 5.

policies. A clear opposite shift would be the creation of fiscal councils in the Member States to monitor compliance with fiscal rules.

The tighter the delegation is relying on rules and fixed procedures, the more it is distanced from discretion. This is why rules and delegation lay on the right of horizontal axis of the multilevel governance model. This is considered in the principal-agent theory derived from rational choice theory, which underlines the “how” of delegation in order to be sure that the institution to which powers has been delegated will not act overly at its own discretion.<sup>23</sup> In this sense, higher levels of transparency allow to keep track on this “how”.

In this first chapter we will consider the power shifts created by the legislation on the new EU economic governance on which the EP has had co-legislative rights. Frank Naert’s classification of these power shifts will be addressed, first by presenting them in an extended manner and secondly by elaborating on their classification, as Naert does not fully in his conference paper.<sup>24</sup>

This classification will be useful in order to understand, in the second chapter, on which power shifts the EP has laid more importance to transparency-related amendments and therefore social accountability, as discussed in the introduction.

Frank Naert recognises 37 power shifts covering financial, fiscal and monetary policy.<sup>25</sup> Among them 17 have been enabled by legislation on which the EP was co-legislator and which has been issued before March 2014, in order to be considered in this research. These are summed up in Table 1.

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23 Mark A. Pollack, “Delegation and discretion in the European Union”, in: Hawkins et al., *Delegation and Agency in International Organizations* (1<sup>st</sup> edition), Cambridge University Press, Cambridge, 2006, p. 166.

24 Naert, p. 16-17.

25 Ibid.

| DENOMINATION  | CODE        | DIRECTION   | ORIGIN           | END  |
|---|-------------|---|------------------|--|
| Establishment of the ESRB   | <i>BU1</i>  | <i>Diagonal</i>   | DiN              | DeEU   |
| Establishment of the EBA, EIOPA and ESMA  | <b>BU2</b>  | <b>Horizontal</b>   | DiEU             | DeEU   |
| Establishment of the SSM  | <b>BU4</b>  | <b>Horizontal</b>   | DiEU             | DeEU   |
| Enforcement of the role of the EBA in the SSM   | <b>BU5</b>  | <b>Horizontal</b>   | DiEU             | DeEU   |
| Single Rule Book for supervision in the EU  | <b>BU6</b>  | <b>Horizontal</b>   | DiEU             | DeEU   |
| Operationalization of debt criterion  | <i>FU1</i>  | <i>Diagonal</i>   | DiN              | RuEU   |
| New expenditure rule  | <i>FU2</i>  | <i>Diagonal</i>   | DiN              | RuEU   |
| Need to improve structural balance with at least 0,5 percent of GDP annually                        | <i>FU3</i>  | <i>Diagonal</i>   | DiN              | RuEU   |
| Interest bearing deposit of 0,2 percent of GDP in case of significant deviation of MTO              | <b>FU5</b>  | <b>Horizontal</b>   | DiEU             | RuEU   |
| Extra monitoring under EDP  | <i>FU6</i>  | <i>Vertical</i>   | DiN              | DiEU   |
| Fines comes earlier at 0,2 percent of GDP   | <b>FU7</b>  | <b>Horizontal</b>   | DiEU             | RuEU   |
| Fine to max. 0,5 percent of GDP in case of statistical fraud  | <i>FUS</i>  | <i>Vertical</i>   | DiN              | DiEU   |
| Decisions on sanctions in EDP with RQMV   | <i>FU9</i>  | <i>Vertical</i>   | DiN              | DiEU   |
| Earlier and higher surveillance for problem countries   | <i>FU10</i> | <i>Vertical</i>   | DiN              | DiEU   |
| National budgetary processes have to be based on independent macro- economic projections            | <b>FU11</b> | Horizontal  | DiN              | DeN  |
| Member states have to introduce numerical fiscal rules  | <b>FU12</b> | <b>Horizontal</b>   | DiN              | RuN  |
| Member states have to establish independent fiscal councils to monitor compliance with fiscal rules | <b>FU13</b> | <b>Horizontal</b>   | DiN              | DeN  |
|   |             | 9 <b>Horizontal</b><br>4 <i>Diagonal</i><br>4 <i>Vertical</i> | 11 DiN<br>6 DiEU | 5 DeEU<br>5 RuEU<br>4 DiEU<br>2 DeN<br>1 RuN |
|   |             | 17 Shifts   |                  |  |

TABLE 1: POWER SHIFTS CLASSIFICATION ACCORDING TO NAERT

- DiEU: Discretion at the EU level
- DeEU: Delegation at the EU level
- RuEU: Rules at the EU level
- DiN: Discretion at the national level
- DeN: Delegation at the national level
- RuN: Rules at the national

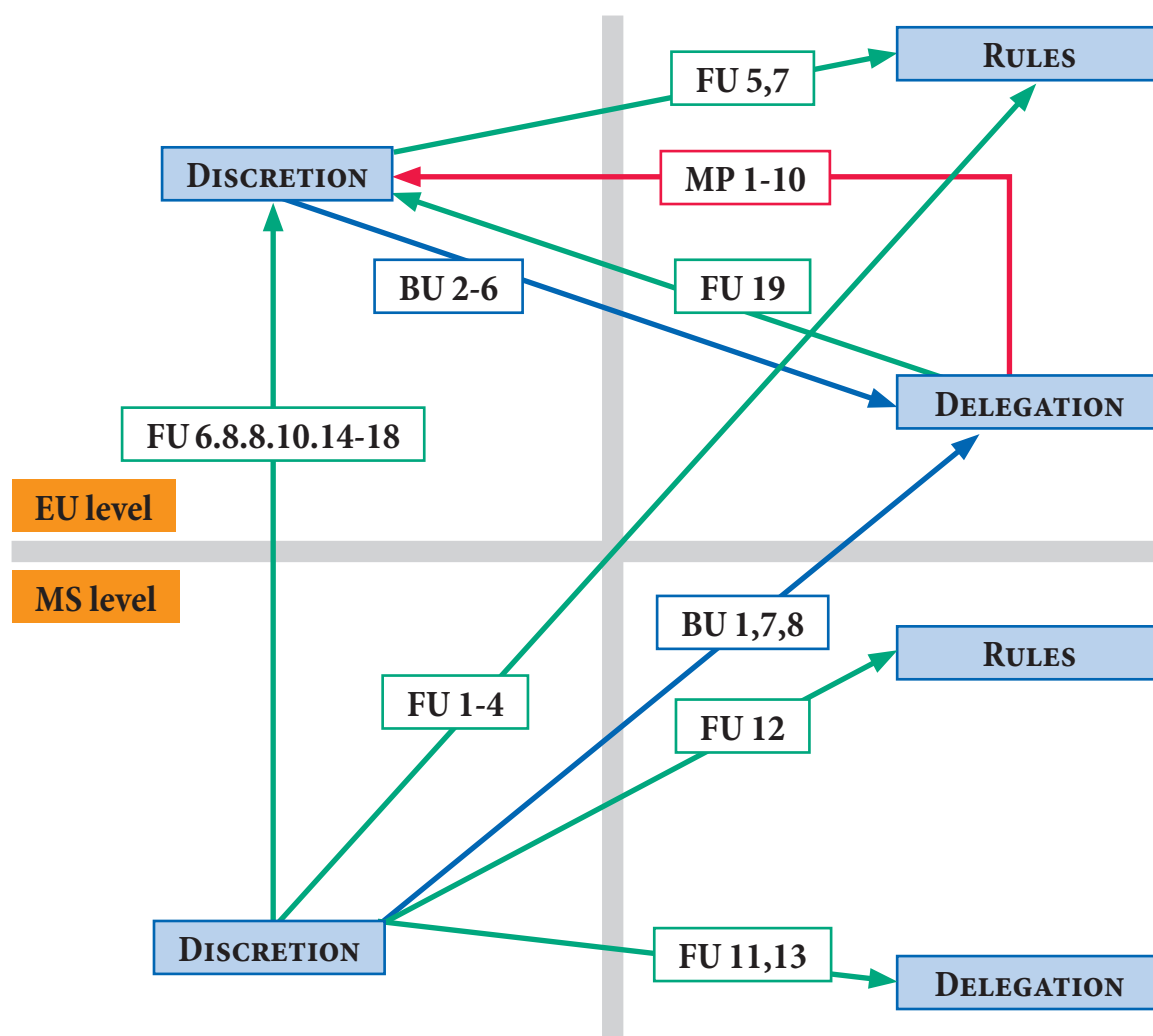


DIAGRAM 1: POWER SHIFTS AS VISUALISED BY NAERT<sup>26</sup>

BU1: Establishment of the European Systemic Risk Board (ESRB)

Naert considers the establishment of the ESRB as a diagonal power shift from the discretion at the national level to delegation at the EU level.

This new EU body is responsible for macroprudential supervision and warning at the EU level. It doesn't represent a shift of competences, as national supervision authorities remain competent, but creates a shift in power as the EU body aims to be "a 'reputational' body with a high level composition that should influence the actions of policy makers

<sup>26</sup> Naert, op. cit., p. 17.

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and supervisors by means of its moral authority”.<sup>27</sup> As the national authorities have to react to the ESRB’s warnings or recommendations, even if non-binding, and as these may impact on the perception of macroprudential situation in each of the Member States, the national authorities’ power is challenged by the ESRB.

The shift is therefore vertical but also horizontal, as it delegates power in order to be applied in a non-discretionary manner. Indeed, by its goals, structure, location and members, the ESRB is aimed at being perceived as independent, and acting under a tight mandate. The body being relatively new, the question remains however, if it will gain from itself more discretion, as the ECB did to tackle extraordinary circumstances.

One may however argue that the ESRB’s establishment consists only of a vertical shift from delegation at the national level to delegation at the EU level, as macroprudential supervision is already delegated at the national level to a national supervision authority. But this may be only formal as macroprudential supervision is “more susceptible to political influence than monetary policy”<sup>28</sup> and this has practically been observed during the growing of the asset bubble preceding the banking crisis.<sup>29</sup>

The failure of national supervisory authorities in the boom years, caused by their lack of independence from governments, supports Naert’s classification of BU1 not only as a vertical shift but also as a horizontal one. The creation of the ESRB creates a body at the higher governance level, which may more probably be independent from political games, and which can counter the national authorities’ “bias towards inaction”.<sup>30</sup>

Furthermore, “discretion” as an origin of the power shift does not only lie on the lack of independence of supervisory authorities, but also on the governments’ decisions to recapitalize banks at their own discretion.<sup>31</sup> Therefore, Naert’s classification of BU1 is seconded.

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27 European Commission, *Proposal for a Regulation of the European Parliament and the Council on Community macro prudential oversight of the financial system and establishing a European Systemic Risk Board*, COM(2009) 499 final, 23 October 2009, p. 5.

28 Itai Agur, Sunil Sharma, *Rules, Discretion, and Macro-Prudential Policy*, IMF Working Paper, WP/13/65, IMF - Singapore Regional Training Institute, Singapore, 2013, p. 12.

29 Valerie Herzberg, Max Watson, *Macroprudential policies in the Euro Area: Issues for the next ten years*, PEFM Discussion Draft, St Antony’s College, University of Oxford, Oxford, 2014, p. 5.

30 Herzberg, op. cit., p. 3.

31 Naert, op. cit., p. 3.

## BU2: Establishment of the European Supervisory Authorities (ESAs)

According to the Naert, the establishment of the ESAs consists of a horizontal power shift at the EU level from discretion to delegation.

Three advisory committees of the Commission (the Committee of European Banking Supervisors (CEBS), the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) and the Committee of European Securities Regulators (CESR)) have been upgraded to the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA) through the adoption of related Regulations.<sup>32</sup>

Before this, the advisory committees could, in the framework of the Lamfalussy process, advise the Commission on measures to be taken.<sup>33</sup> In the new Regulation architecture, the ESAs gain in power towards the Commission as they can draft themselves “regulatory and implementing technical standards”<sup>34</sup> which the Commission can endorse or send back to the authority with amendments to be considered. Furthermore, the Commission “may not change the content of a draft regulatory technical standard prepared by the Authority without prior coordination with the Authority”.<sup>35</sup> Only if the ESA does not answer to the Commission’s amendments before a six-week period, then the Commission may adopt the standard with its proposed amendments or reject it.

The ESAs’ powers are further strengthened in the sense that in case of disagreement between national authorities the ESAs are allowed to adopt binding decisions “in order to settle the matter”.<sup>36</sup> They can also act in case of “breach of Union law” or “emergency situations”.<sup>37</sup>

Accordingly, we recognise that the establishment of the ESAs creates independent bodies with wider prerogatives than the earlier advisory committees and which hold a stronger

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32 Pierre Schammo, “EU Day-to-Day Supervision or Intervention-based Supervision: Which Way Forward for the European System of Financial Supervision?”, in: *Oxford Journal of Legal Studies*, Vol. 32, No. 4, 2012, p. 776.

33 European Commission, *The Application of the Lamfalussy Process to EU Securities Markets Legislation*, Commission Staff Working Document, SEC (2004) 1459, 15 November 2004, p. 16.

34 Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, Article 8 (1) a), OJ L331/12, 15 December 2010.

35 Ibid., Art. 10 (1).

36 Ibid., Art. 19 (3).

37 Ibid., Art. 17 & Art. 18.

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position towards the Commission, especially regarding the adoption of binding acts. To this regard, we can conclude that BU2 consists of a horizontal shift delegating some of the Commission's discretionary power to an independent body.

#### BU4: Establishment of the Single Supervisory Mechanism (SSM)

Following Naert, the establishment of the SSM is a horizontal power shift at the EU level from discretion to delegation. The SSM is a supervisory mechanism at EU level for credit institutions.

Naert's classification is however questionable as the SSM Regulation does not enforce a power shift within the EU level. Indeed, until the SSM Regulation, supervisory tasks of credit institutions have been held by national supervisory authorities, which still keep some prerogatives towards credit institutions not directly supervised by the ECB.<sup>38</sup> We should consider the SSM as a vertical power shift from the national to the EU level.

Furthermore, the reason for the establishment of the SSM may be sought, as for the ESRB, in the "bias towards inaction"<sup>39</sup> of national supervisory authorities in the years preceding the banking crisis, which has exposed by their vulnerability to political influence, and therefore their discretionary nature. We may therefore conclude that BU4 consists of a power shift from discretion at the national level to delegation at the EU level, which we may sum up as a diagonal power shift.

#### BU5: Enforcement of the role of the EBA in the SSM

In Naert's classification, this power shift is horizontal at the EU level. The Regulation amending the EBA Regulation in the context of the SSM is centrally aimed at clarifying the limits between EBA and ECB prerogatives. But it also provides for some power gains for the EBA in voting modalities. Especially in the case of breach of Union law or emergency situations, point (22) amending Article 41 and (24) amending Article 44 set a derogation to EBA decision-making under qualified majority and allows for decisions under simple majority in the Board of Supervisors.<sup>40</sup> This enhances the power the EBA gained from the Commission at its establishment. As the establishment of the EBA has

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<sup>38</sup> Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, Article 14 (6), OJ L287/63, 29 October 2013.

<sup>39</sup> Herzberg, *op. cit.*, p. 3.

<sup>40</sup> Regulation (EU) No 1022/2013 of the European Parliament and of the Council of 22 October 2013 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority) as regards the conferral of specific tasks on the European Central Bank pursuant to Council Regulation (EU) No 1024/2013, OJ L287/5, 29 October 2013.

been considered as a horizontal power shift at EU level, the EBA's enforcement may be also considered as such.

#### BU6: Single Rule Book for supervision in the EU

Naert considers the adoption of a Single Rule Book as a horizontal power shift at the EU level from discretion to delegation. The Single Rule Book is enforcement by two pieces of legislation. The Capital Requirement Regulation (CRR) provides for a set of rules on capital, liquidity and credit risk at the EU level directly applicable in the Member States, whereas the Capital Requirement Directive (CRDIV) provides for further rules to be implemented by the national competent authorities.

Furthermore, the EBA is empowered by Regulation 1093/2010 “to ensure consistent and effective application of the European legislation within its scope”<sup>41</sup> and to “develop new practical instruments and convergence tools to promote common supervisory approaches and practices”.<sup>42</sup> The EBA can therefore continuously develop the Single Rule Book by drafting Binding Technical Standards (BTS) to be adopted by the Commission.

Naert's classification can be questioned. According to the Commission's Explanatory Memorandum, the Single Rule Book aims at harmonising “divergent national supervisory approaches by removing options and discretions almost altogether”.<sup>43</sup> The problem of discretion at national level in the adoption of divergent liquidity, capital and credit risk provisions partially responsible of the banking crisis is therefore addressed by shared delegation at the EU level between EBA and Commission. It is therefore correct to classify the shift as diagonal from discretion at the national level to delegation at the EU level.

#### FU1: Operationalization of the debt criterion

In Naert's classification, this first assessed fiscal power shifts, the operationalization of the debt criterion, is considered as a diagonal power shift from discretion at the national level to rules at the EU level. Indeed, through Regulation 1177/2011,<sup>44</sup> the compliance to budgetary discipline is not only examined on the basis of the deficit level

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41 Regulation (EU) No 1093/2010, Article 1 (5) a).

42 Regulation (EU) No 1093/2010, Article 29 (2).

43 European Commission, *Proposal for a Regulation of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms, Part I*, COM (2011) 452 final, 20 July 2011, p. 7.

44 Council Regulation (EU) No 1177/2011 of 8 November 2011 amending Regulation (EC) No 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure, Point (1), OJ L306/33, 23 November 2011.



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alone anymore but also considering the debt level. Therefore excessive debt levels can trigger an Excessive Deficit Procedure (EDP) under the Stability and Growth Pact (SGP). As a consequence, government debt ratios over 60 percent may be required to decrease of 1/20 yearly. Undoubtedly, new rules for reaching compliance at the national level being adopted at the EU level stand for a diagonal shift, as assessed by Naert.

#### FU2: New expenditure rule

Naert considers the new expenditure rule as a diagonal power shift from discretion at the national level to rules at the EU level. Regulation 1175/2011 of the Six Pack amends Article 9 of Regulation 1466/97 on the SGP by introducing the assessment of expenditure development in the Member States, as presented in the Convergence Programmes.<sup>45</sup> This provision allows the Commission and the Council to determine if the Member State in question deviates from the Medium-Term Objective (MTO) and take further action.

We can agree with Naert on his classification considering that this provision seeks to lower the degree of discretion of national government in their drafting of budgetary plans. The question of the binding character of this measure remains, which will be addressed further in the consideration of FU9, the power shift relating to reverse qualified majority voting (RQMV).

#### FU3: Need to improve structural balance with at least 0.5 percent of GDP annually

In Naert's classification, the need to improve the "cyclically adjusted balance net of one-off and temporary measures" of 0.5 percent of GDP annually is a diagonal power shift from discretion to the national level to constraint by rules at the EU level. This disposition is set in Regulation 1177/2011 amending Article 3 of Regulation 1467/97 and can be triggered after a Council recommendation which "shall" request it to a Member State subject to an EDP.<sup>46</sup> As in the above assessed power shifts relating to rules at the EU level, we can agree here with Naert.

#### FU5: Interest bearing deposit of 0,5 percent of GDP in case of significant deviation of MTO

As provided for in Article 4 (1) of Regulation 1173/2011<sup>47</sup> and point (9) of Regulation 1175/2011 amending Article 6 (2) 2) of Regulation 1466/97, in case of a significant

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45 Regulation (EU) No 1175/2011 of the European Parliament and of the Council of 16 November 2011 amending Council Regulation (EC) No 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies, OJ L306/12, 23 November 2011.

46 Council Regulation (EU) No 1177/2011, Point (4).

47 Regulation (EU) No 1173/2011 of the European Parliament and of the Council of 16 November 2011

observed deviation from the MTO the Commission shall address a warning to the Member State and the Council shall adopt a subsequent recommendation. If the Council adopts a decision establishing that the Member State failed to take action in response to this recommendation, the Commission shall recommend that the Council takes a further decision requiring an interest bearing deposit of 0,2 percent of GDP (not 0,5 percent of GDP as mentioned by Naert) to be lodged by the Commission.

Naert classifies this as a horizontal power shift at the EU level from discretion to rules. This is acceptable as this new provision sets a more detailed mechanism for the Council to require an interest-bearing deposit from the Member State. Even if the Council is at no point forced to request the interest-bearing deposit, the clear framework relates closely the deviation from the MTO to the possibility of coercive “correcting” measures, whose nature is provided for in the Regulation. We may however underline that this represent a very soft type of power shift as the rule exists but has not directly binding consequences. The only binding point being that if Council and Commission reach the end of this procedure the amount of the fine will be set in advance and will have to be an interest-bearing deposit reaching 0,2 percent of GDP. The question of the automaticity of the mechanism will be further discussed in discussing power shift FU9.

#### FU6: Extra monitoring under EDP

According to Article 10a (1) and (2) introduced by point (10) of Six Pack Regulation 1177/2011 amending Regulation 1467/97 on the EDP, the Commission shall carry out missions for the purpose of assessing the economic situation of the Member States. Furthermore, the Commission may undertake an enhanced surveillance through “on-site monitoring” for Member States under an EDP. In this sense, “the Member States concerned shall provide all necessary information for the preparation and the conduct of the mission”.

Naert classifies this as a vertical power shift from discretion at the national level to discretion at the EU level. This is however arguable, as the only binding measure for the Member State seems to be the obligation to provide “all necessary information” to the Commission.

This allows for two interpretations. Either the provision ascribes new powers to the Commission, as it can now force Member States to provide the requested material, either this is a provision which does not produce any new legal rights for the Commission and any new obligations for the Member States.

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on the effective enforcement of budgetary surveillance in the euro area, OJ L306/1, 23 November 2011.

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Indeed, it is arguable that the obligation to provide all necessary information to the Commission is already provided for by Article 4 (3) of the Treaty on European Union (TEU) which states that pursuant to the principle of “sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties”.<sup>48</sup> In this case and considering only Regulation 1177/2011, we would assert that the second interpretation is more convincing and that FU6 does not represent as such any power shift.

FU7: Fines come earlier at 0.2 percent of GDP

Article 6 (1) of Regulation 1173/2011 of the Six Pack provides that if the Council decides that a Member State has not taken effective action to correct its excessive deficit, “the Commission shall, within 20 days of that decision, recommend that the Council, by a further decision, impose a fine, amounting to 0.2 % of the Member State’s GDP in the preceding year”. Naert considers this as a horizontal shift at the EU level from discretion to rules.

Indeed, it decreases the Council’s discretion in deciding on the consequence of the lack of effective action to correct excessive deficits, as once this decision is taken the Commission shall recommend the Council to require a fine, which may only be rejected by the Council through RQMV (FU9). This increases the automaticity of the fine. The shift remains however modest, as the Council keeps the discretion of deciding on the existing of a lack of effective action, necessary for the Commission’s sanction recommendation to be triggered.

We could also reformulate the shift to “Fines at 0.2 percent of GDP”, as the question of an earlier fine is the result of RQMV (FU9) which makes the fine more probable.

FU8: Fine to maximum 0.5 percent of GDP in case of statistical fraud

Article 8 (1) of Regulation 1173/2011 foresees fines for a Member State that “intentionally or by serious negligence misrepresents deficit and debt data”. Contrary to Naert’s description, the maximum of the fine is not of 0.5 percent of GDP but of 0.2 percent. This fine may be imposed by the Council on a recommendation of the Commission. Naert recognises here a vertical power shift from discretion at the national level to discretion at the EU level.

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48 Consolidated Version of the Treaty on European Union, OJ C326/13, 26 October 2012.

Coupled with a system of monitoring, further developed in a Commission's delegated act,<sup>49</sup> the possibility of fines reduces the discretion of statistical offices at the national level by framing their activities at the EU level through the Commission's statistical office Eurostat. Eurostat can thus launch investigations at its discretion, for instance in case of suspicion.

However, this vertical shift implies a second consecutive power shift, as it sets a limit for the fine. Therefore, part of the new discretion authorised at the EU level by the first power shift is constrained by a rule at the EU level: the 0,2 percent limit. This represents a horizontal power shift from discretion to rules at the EU level. This shift has to be added to Naert's classification.

#### FU9: Decisions on sanctions in EDP with RQMV

According to Articles 4, 5 and 6 of Regulation 1173/2011 decisions on interest-bearing deposits, non-interest-bearings deposits and fines in the context of the reinforced EDP shall be "deemed to be adopted by the Council unless it decides by a qualified majority to reject the Commission's recommendation". According to Naert, this represents a vertical power shift from discretion at the national level to discretion at the EU level.

This is questionable as RQMV doesn't provide for more discretionary power at the EU level, as the Council already holds the discretionary power of requiring fines in case of breaches of the SGP. More accurately, the shift consists in the fact that if the Council recognises a lacking, it is than more likely to adopt sanctions because of the more restrictive voting rules. EU level discretion is therefore limited and rules on sanctions (such as FU2, FU5 and FU7) are reinforced. The adoption of sanctions in EDP with RQMV shall therefore be considered as a horizontal power shift at the EU level from discretion to rules.

#### FU10: Earlier and higher surveillance for problem countries

Article 9 and 10 of Directive 2011/85/EU<sup>50</sup> provide that Member States shall establish budgetary frameworks providing for forward fiscal planning of at least 3 years including multiannual budgetary objectives, projections for each major expenditure and revenue

49 Commission européenne, *Décision déléguée de la Commission du 29.6.2012 relative aux enquêtes et amendes liées à la manipulation des statistiques visées dans le règlement (UE) n° 1173/2011 du Parlement européen et du Conseil sur la mise en œuvre efficace de la surveillance budgétaire dans la zone euro*, C(2012) 4361 final, 29 June 2012.

50 Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States, OJ L306/41, 23 November 2011.

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item of the general government and a description of medium-term policies envisaged and their impact on general government finances. This allows for clearer budgetary prospects, which can be easily monitored at the EU level.

Moreover, the Macroeconomic Imbalance Procedure (MIP) introduced through Regulation 472/2013<sup>51</sup> and 473/2013<sup>52</sup> sets a benchmarking procedure of Member States' economy going further than considering deficit and debt and taking into account more than ten macroeconomic indicators, the MIP scoreboard. On this basis, an Excessive Imbalance Procedures (EIP) can be triggered which can ultimately lead to sanctions.

Naert considers FU10 as a vertical power shift from discretion at the national level to discretion at the EU level. As for FU8, this can be questioned. What Naert identifies as a single power shift should be considered as three different but parallel ones.

Firstly, the obligation for a Member State to draft a medium-term budget following some new rules may be considered as a diagonal shift from discretion at the national level to rules at the EU level.

Secondly, the possibility of a higher surveillance, in a wider number of indicators than in EDP, which may lead to sanctions at the EU level, is a shift from discretion at the national level to discretion at the EU level, as Council and Commission may require Member States to adapt their policies.

Thirdly, this newly gained power from Council and Commission has limits as it is operated in a framework composed of rules which constrain the discretion of these institutions, regarding the thresholds, voting modalities or sanctions to be applied. This stands for a third horizontal power shifts at the EU level from discretion to rules.

FU11: National budgetary processes have to be based on independent macro-economic projections

Naert assesses that the requirement providing for national budgetary processes to be based on independent macro-economic projections is a horizontal power shift at national level from discretion to delegation.

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51 Regulation (EU) No 472/2013 of the European Parliament and of the Council of 21 May 2013 on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability, OJ L140/1, 27 May 2013.

52 Regulation (EU) No 473/2013 of the European Parliament and of the Council of 21 May 2013 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, OJ L 140/11, 27 May 2013.

However, Article 4 (1) of Directive 2011/85/EU provides that macroeconomic and budgetary forecasts of Member States “shall be compared with the most updated forecasts of the Commission and, if appropriate, those of other independent bodies”. Furthermore, “significant differences between the chosen macrofiscal scenario and the Commission’s forecast shall be described with reasoning”. Article 4 (6) provides that these forecasts should be subject to evaluation, including *ex post* and that in case of continuous proven bias on a period of 4 years, Member States should take appropriate action.

As apparent, the legislation does not provide for mandatory use of independent macroeconomic projections. It sets however that action should be taken in case of lasting bias with Commission’s projections. This provides indeed for less discretion at the national level but it is not replaced by delegation at the national level, as the resort to “other independent bodies”, which may be national, is only in addition to comparison with Commission’s forecast. Therefore, national level discretion is constrained by a non-discretionary policy at the EU level, at the Commission. We would therefore suggest classifying this power shift as a diagonal one from discretion at the national level to delegation at the EU level.

FU<sub>12</sub>: Member States have to introduce numerical fiscal rules

Article 5 of Directive 2011/85/EU provides that each “Member State shall have in place numerical fiscal rules which are specific to it and which effectively promote compliance with its obligations deriving from the [Treaty on the Functioning of the EU] in the area of budgetary policy over a multiannual horizon for the general government as a whole”.

Naert describes this as a horizontal shift at the national level from discretion to rules. As the Member State is given room of manoeuvre to set the appropriate rule necessary to reach the mentioned objective, which is already an obligation under the TFEU and the SGP, no power shift takes place to the EU level. The rule, which may differ from a Member State to the other, remains at the national level. Therefore we can agree with Naert’s classification.

FU<sub>13</sub>: Member States have to establish independent fiscal councils to monitor compliance with fiscal rules

Article 6 (1) b) of Directive 2011/85/EU sets that the compliance with numerical fiscal rules (FU<sub>12</sub>) shall be monitored “based on reliable and independent analysis carried out by independent bodies or bodies endowed with functional autonomy vis-à-vis the fiscal authorities of the Member States”. This provision is further detailed in Article 5 of Two

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Pack Regulation 473/2013, which requires Member States to dispose of an “independent fiscal body” for monitoring compliance with the rules mentioned.

Naert suggests that FU13 represents a horizontal power shift at the national level from discretion to delegation. We can second this view as this provision reduces the ability for bypassing of fiscal rules as an independent body is set at the national level for overviewing.

#### FU14: macroeconomic adjustment programmes

According to Article 7 of Regulation 472/2013 of the Two Pack, a country requesting financial assistance “from one or several other Member States or third countries, the EFSM, the ESM, the EFSF or the IMF, [...] shall prepare, in agreement with the Commission, acting in liaison with the ECB and, where appropriate, with the IMF, a draft macroeconomic adjustment programme”. This may be considered as an introduction into the EU legal order of *ad hoc* solutions, such as the Troika of Commission, ECB and IMF, set up during the financial crisis to supervise structural reforms in the so-called programme countries.

Even if Naert may have considered this shift in the framework of the establishment of the ESM (FU16 in his classification)<sup>53</sup> he does not recognise this power shift explicitly. It is however highly relevant as it provides for the Commission and other institutions to have an impact on macroeconomic policy in a certain Member State through negotiation of an adjustment programme, as a conditionality for the granting of financial support. Even if the final decisive power on the adoption of a Macroeconomic adjustment programme remains at the discretion of the national authorities, we may characterise this constraint of national discretion as a vertical shift from discretion at the national level to discretion at the EU level.

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53 Naert, op. cit., p. 16.



## Results summary

| DENOMINATION  | CODE        | REVISION  | ORIGIN           | END  |
|---|-------------|---|------------------|--|
| Establishment of the ESRB   | <i>BU1</i>  | <i>Diagonal</i>   | DiN              | DeEU   |
| Establishment of the EBA, EIOPA and ESMA  | <b>BU2</b>  | <b>Horizontal</b>   | DiEU             | DeEU   |
| Establishment of the SSM*   | <i>BU4</i>  | <i>Diagonal</i>   | DiN              | DeEU   |
| Enforcement of the role of the EBA in the SSM   | <b>BU5</b>  | <b>Horizontal</b>   | DiEU             | DeEU   |
| Single Rule Book for supervision in the EU*   | <i>BU6</i>  | <i>Diagonal</i>   | DiN              | DeEU   |
| Operationalization of debt criterion  | <i>FU1</i>  | <i>Diagonal</i>   | DiN              | RuEU   |
| New expenditure rule  | <i>FU2</i>  | <i>Diagonal</i>   | DiN              | RuEU   |
| Need to improve structural balance with at least 0,5 % of GDP annually                              | <i>FU3</i>  | <i>Diagonal</i>   | DiN              | RuEU   |
| Interest bearing deposit of 0,2 % of GDP in case of significant deviation of MTO                    | <b>FU5</b>  | <b>Horizontal</b>   | DiEU             | RuEU   |
| Extra monitoring under EDP*   | <b>FU6</b>  | Ø   | -                | -  |
| Fines at 0,2 % of GDP*  | <b>FU7</b>  | <b>Horizontal</b>   | DiEU             | RuEU   |
| Fine to max. 0,2 % of GDP in case of statistical fraud*   | <b>FU8</b>  | 2 shifts <b>V+H</b>   | Multiple1        | Multiple1                                    |
| Decisions on sanctions in EDP with RQMV*  | <b>FU9</b>  | <b>Horizontal</b>   | DiEU             | RuEU   |
| Earlier and higher surveillance for problem countries*  | <b>FU10</b> | 3 shifts <b>D+V+H</b>   | Multiple2        | Multiple2                                    |
| National budgetary processes have to be based on independent macro-economic projections*            | <i>FU11</i> | <i>Diagonal</i>   | DiN              | DeEU   |
| Member states have to introduce numerical fiscal rules  | <b>FU12</b> | <b>Horizontal</b>   | DiN              | RuN  |
| Member states have to establish independent fiscal councils to monitor compliance with fiscal rules | <b>FU13</b> | <b>Horizontal</b>   | DiN              | DeN  |
| Macroeconomic adjustment programmes*  | <b>FU14</b> | <b>Vertical</b>   | DiN              | DiEU   |
|   |             | 9 <b>Horizontal</b><br>8 <i>Diagonal</i><br>3 <b>Vertical</b> | 13 DiN<br>7 DiEU | 9 RuEU<br>6 DeEU<br>3 DiEU<br>1 RuN<br>1 DeN |
|   |             | 20 Shifts   |                  |  |

TABLE 2: REVISED POWER SHIFTS' CLASSIFICATION



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**Indications:**

- \* : power shifts revised (9)
- Multiple1:
  - origin DiN, end DiEU
  - “ DiEU, “ RuEU
- Multiple2:
  - origin DiN, end RuEU
  - “ DiN, “ DiEU
  - “ DiEU, “ RuEU
- DiEU: Discretion at the EU level
- DeEU: Delegation at the EU level
- RuEU: Rules at the EU level
- DiN: Discretion at the national level
- DeN: Delegation at the national level
- RuN: Rules at the national level

## Chapter conclusions

Naert's assumption in his conference paper is that horizontal and diagonal power shifts have been underestimated in the discussion on the consequences of power shifts in the new EU economic governance. According to this review, it is possible to say that regarding power shifts on which the European Parliament as had an impact through the OLP, the number of diagonal power shifts to rules or delegation has been even higher than claimed by Naert (4 out of 17 to 8 out of 20).

|                            | NAERT'S<br>CLASSIFICATION                                     | REVISION  |
|----------------------------|---|---|
| Amount of power shifts     | 17 shifts   | 20 shifts   |
| Direction of power shifts  | 9 <b>Horizontal</b><br>4 <i>Diagonal</i><br>4 <b>Vertical</b> | 9 <b>Horizontal</b><br>8 <i>Diagonal</i><br>3 <b>Vertical</b> |
| Origin, before power shift | 11 DiN<br>6 DiEU  | 13 DiN<br>7 DiEU  |
| End, after power shift     | 5 DeEU<br>5 RuEU<br>4 DiEU<br>2 DeN<br>1 RuN                  | 6 DeEU<br>9 RuEU<br>3 DiEU<br>1 DeN<br>1 RuN                  |

TABLE 3: COMPARISON OF NAERT'S AND REVISED CLASSIFICATIONS

Furthermore we can assert that the amount of power shifts and their complexity has been also undervalued by Naert, probably for the sake of clarity. Naert recognises 17 power shifts, 20 have been observed in the course of this chapter. Some power shifts appeared to consist of several shifts, one did not represent a shift at all, and another was ignored.

Considering the origin and end of power shifts, we may observe that all the power shifts start at a state of discretion, in majority at the national level, be it in Naert's (11 out of 17) or in the revised classification (13 out of 20). The overwhelming majority of power shifts ends at the EU level (Naert: 14 out of 17, revision: 18 out of 20). Also, the overwhelming majority of shifts occur towards delegation or rules. Only 4 out of 17 in Naert and even less in the revision (3 out of 20) occur towards discretion at any level. Moreover, the amount of power shifts to rules at any level are underrated by Naert (6 out of 17) compared with the revision (10 out of 20).

| BEFORE POWER SHIFT   | AFTER POWER SHIFT   |
|--|---|
| <ul style="list-style-type: none"> <li>- Discretion at the national level: 13</li> <li>- Discretion at the EU level: 7</li> <li>- Discretionary (national &amp; EU): 20</li> <li>- Non-discretionary (national &amp; EU): 0</li> </ul> | <ul style="list-style-type: none"> <li>- Discretion at the national level: 0</li> <li>- Discretion at the EU level: 3</li> <li>- Delegation at the national level: 1</li> <li>- Delegation at the EU level: 6</li> <li>- Rules at the national level: 1</li> <li>- Rules at the EU level: 9</li> <li>- Discretionary (national &amp; EU): 3</li> <li>- Non-discretionary (national &amp; EU): 17</li> </ul> |

**TABLE 4: FULL AGGREGATION OF RESULTS OF THE REVISED POWER SHIFTS' CLASSIFICATION**

We can therefore conclude this chapter by stating that the legislation that we will consider in the next chapter, and particularly their successful amendment by the EP on transparency matters, relate stronger than expected to power shifts from discretion at the national level to rules and delegation, which may require higher transparency in a principal-agent approach. This increases even more the importance and relevance of the transparency enforcing effort of the EP for the sake of accountability of the decision-making process.



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## **Chapter II. EP transparency amendments in the new EU economic governance legislation**

This chapter aims at recognising how the EP has successfully allocated accountability-fostering transparency requirements to power shifts mentioned in the precedent chapter.

In order to achieve this, it will consider each legislative act on new EU economic governance on which the EP has been co-legislator and recognise the power shifts enabled by them. In the same legislative acts, it will then observe which transparency-related amendments stemming from the ECON reports have been successfully passed through the decision-making process and link them to the addressed power shift. Points will be conceded for each amendment following the method explained in the introduction of this study. The points will be aggregated for each legislative act and for the power shift to which they relate. In this sense, it will be possible to recognise which acts produced more transparency of decision-making and which power shifts have been most the target of successful transparency-related amendments.

We remind here that only a fraction of the new EU economic governance has been adopted through OLP. Several legislative procedures have fully ignored the EP. Indeed, Member States have adopted binding rules outside of the EU legal order, as through the Fiscal Compact or by adopting the EFSF and the ESM. Other elements of the new EU economic governance have been enforced by an independent EU body at its own discretion, such as the Long Term Refinancing Operations (LTRO) or the Outright Monetary Transactions (OMT) of the ECB. The EP had no legislative influence on these matters.

At this point, it is relevant to refer at specific developments of legislative procedures. Indeed, since its introduction by the Lisbon Treaty, the OLP has experienced a strong development of informal and on-going meetings, called trilogues, between the European Commission, the EP and the Council, in which views are exchanged behind closed

doors in order to find early agreements. In the Sixth EP, so-called “fast-track legislation” accounts for 72 percent of codecision files.<sup>54</sup>

In practice, reports adopted in an EP Committee represent a negotiating mandate for the Rapporteur towards, mainly, the Council. Therefore, in case of an agreement in the trilogue, the Rapporteur usually tables in plenary, in name of his Committee and along with his Committee colleagues, an amendment to its report adapting it to the newly reached compromise. If the amended report is adopted by plenary, the legislative act may be adopted or negotiations with the Council may continue after this point. If new provisions are agreed upon, the EP will adopt a declaration stating that the new position of the EP is reflected in the final legislation, as published in the Official Journal (OJ), in order to avoid a lengthy second reading.

Therefore, final positions of the EP, as adopted by plenary, are of doubtful use in order to assess, which positions have been held by the EP. As the content of trilogue negotiations remains confidential, it is impossible to recognize which positions have been defended by the EP during these meetings. Ultimately, even if informal contacts may have been held between the EP and the Council prior the vote on the report in Committee, the Committee report, as a negotiation mandate, is the nearest we may consider to a EP position before Council negotiation.

At the light of these developments, in order to assess if the EP has been able to make its voice heard regarding transparency requirements, we will compare the amendments of the Committee report with the final legislation as published in the OJ. We will do this for each piece of legislation adopted through OLP concerning the new EU economic governance in the fiscal, financial and macroeconomic policy fields.

Due to resource restrictions, in order to assess which transparency provisions ensure, empirically, higher levels of social accountability, we will use a quantitative approach, upgraded case-by-case, when possible, by a qualitative approach. Therefore, we will at first focus on the number of transparency provisions and assume that a higher number of them assure higher levels of transparency and, therefore, of social accountability. In this sense, we will use a “transparency scoreboard” to each piece of legislation, granting points in relation to the ability of the EP to achieve its goal on transparency.

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54 Christine Reh et al., “The Informal Politics of Legislation: Explaining Secluded Decision Making in the European Union”, in: *Comparative Political Studies*, Vol. 46, No. 9, 2011, p. 1112.

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Therefore, 1 point will be granted for a clause fully included on the final legislation, 0.5 point for a clause partially included. Qualitative insights will be, as mentioned, also taken into account.

First, legislation regarding financial supervision will be considered. In a second part legislation on fiscal and macroeconomic policy will be addressed.

## A. FINANCIAL POLICY

| ESFS   | LEGISLATION  | EP PROCEDURE    | Rapporteur               |
|--|--------------|-----------------|--------------------------|
| Establishment of the ESRB                      | 1092/2010    | 2009/0140(COD)  | Goulard                  |
| Establishment of the EEA                       | 1093/2010    | 2009/0142(COD)  | García-Margallo y Marfil |
| Establishment of the EIOPA                     | 1094/2010    | 2009/0143(COD)  | Skinner                  |
| Establishment of the ESMA                      | 1095/2010    | 2009/0144(COD)  | Giegold                  |
| “Omnibus” Directive                            | 2010/78/EU   | 2009/0161(COD)  | Presedo                  |
| Capital Requirement Regulation                 | 575/2013     | 2011/0202(COD)  | Karas                    |
| Capital Requirement Directive                  | 2013/36/EU   | 2011/0203(COD)  | Karas                    |
| <b>SSM</b>                                     |              |                 |                          |
| Conferral of tasks to the ECB                  | 1024/2013    | 2012/05 II(COD) | Thyssen                  |
| Amendment of the EEA in the context of the SSM | 1022/2013    | 2012/0244(COD)  | Giegold                  |
| Interinstitutional agreement EP - ECB          | 2013/694/ECJ | 2013/2198(ACI)  | Casini                   |

TABLE 5: RELEVANT LEGISLATION FOR FINANCIAL POLICY

### 1. ESFS: EUROPEAN SYSTEM OF FINANCIAL SUPERVISION

#### • Regulation establishing the ESRB<sup>55</sup>

Sylvie Goulard (ALDE) was appointed as Rapporteur on this legislation in the ECON EP Committee. Her report was adopted on 10 May 2010 by 34 votes in favour, no against and four abstentions, holding for a support near to unanimity.<sup>56</sup> The Regulation fully relates to power shift BU1.

<sup>55</sup> Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board, OJ L331/1, 15 December 2010.

<sup>56</sup> European Parliament, Committee on Economic and Monetary Affairs, *Report on the proposal for a*



The amendments relating to transparency included in the Goulard report may be divided in two categories: 1) those seeking to ease the publication of relevant information on the work of the ESRB and 2) those focusing on making relevant staff members of the ESRB heard by the EP and 3) requirements regarding the revision of the Regulation.

*Transparency: Publishing information*

Amendment 100 adds that “reports referred to in this Article [19] shall be made available to the public”. In the original proposal, Article 19 includes that the ESRB “shall report at least annually to the European Parliament and to the Council” and also that the “ESRB shall also examine specific issues at the invitation of the Council or the Commission”. This last provision may imply that reports adopted as a result of an “invitation of the Council or the Commission” may equally have to be made public, following Amendment 100. However, the OJ version is more restrictive. The provision at Article 19 (2) specifically sets publication requirement to the “annual report” to the Parliament and the Council and leaves no scope for ambiguity.

*Transparency: Hearing officials*

Amendment 51 provides that “[b]efore taking office, the Chair and first Vice-Chair shall present to the European Parliament, during a public hearing, how they intend to discharge their duties under this Regulation”. This provision is taken over in article 5 (4) but without “[b]efore taking office”. In this sense, the provision guarantees a public hearing but doesn’t assure that it will allow ex-ante control.

Amendment 99 introducing Article 16a aims at widening the scope of cases in which the EP can invite the ESRB staff to report to the Parliament. It states that “in the event of widespread financial distress” the ESRB Chair should be invited more “frequently” than annually to a hearing, in a different context than the Monetary Dialogue between ECB and EP. This provision remains in Article 19 (1) of the OJ version. It is however important to underline that this doesn’t represent any binding requirement for the ESRB to participate to the hearings.

Amendment 102 is more assertive as it foresees that the EP may “request the President of the ESRB and the other members of the Steering Committee to attend a hearing of the competent Committees of the European Parliament”. The OJ version includes the

same wording in Article 19 (4) but for an exception: “other members of the Steering Committee” are not included.

*Transparency: Reviewing the institution*

Article 20 of the legislative proposal sets that the Council shall, three years after the entry into force of the Regulation and on the basis on a Commission report, determine if the missions and organisation of the ESRB should be reviewed. Amendment 103 of the Goulard report foresees that the EP should co-decide on the review with the Council and that the mentioned report should among other points assess whether “accountability and transparency in relation to publication requirements are adequate”. Article 20 of the OJ version still includes the EP as a co-decider on reviewing but the review report isn’t required to assess accountability and transparency.

*Findings:* In this case, EP transparency amendment focus on issuing data, making reports public and increasing the possibility for the EP to invite, or request, the hearing of ESRB staff. The EP has managed to achieve moderate gains concerning publications, hearings and review in 5 amendments. The Regulation scores 2,5 points, which all relate to BU1.

*Remark:* Interestingly, Article 19 (5) of the OJ version provides for compulsory “confidential oral discussions” “behind closed doors” at least twice a year, on the ongoing activity of the ESRB, between the Chair of the ESRB and the Chair and Vice-Chairs of the ECON Committee of the EP. This arrangement doesn’t appear in any amendments tabled by the EP, except the last plenary amendment including the agreement following the last trilogue. Even if it may be seen as a concession to the EP regarding its implication in supervising the ESRB it doesn’t provide for a wider public transparency, hence doesn’t contribute to social accountability.

- **Regulations establishing the European Supervisory Authorities (ESAs)**

The parliamentary reports for the following four legislative acts (EBA, EIOPA, ESMA and “Omnibus”) have been adopted on 10 May 2010 by ECON and fully relate to the power shift BU2.

### **I. Regulation establishing the European Banking Authority (EBA)<sup>57</sup>**

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<sup>57</sup> Regulation (EU) No 1093/2010, OJ L331/12.

José Manuel García-Margallo y Marfil (EPP) was appointed Rapporteur on this legislation. His report was adopted on by 37 votes in favour, one against and four abstentions.<sup>58</sup>

*Transparency: Publishing information*

Amendment 100 seeks to ensure that, in case authorities concerned by EBA guidelines or recommendations decide not to comply with them, they shall then state reasons to the EBA which “shall publish them”. Article 16 (3) of the OJ version is more limited as it sets that the EBA shall publish the fact that an authority does not comply or does not intend to comply with a guideline or recommendation and that it “may” decide “on a case-by-case basis” to publish the reasons provided by the concerned authority.

Amendment 149 provides that the EBA “shall make the outcome of peer reviews and the best practices that can be identified from those peer reviews publicly available” in the context of peer reviews organised by the EBA to identify ways of improving the stability of financial institutions. The OJ version is sensibly different. What is bound to be made publicly available in article 30 (5) are “best practices” identified from the peer reviews and not the peer reviews themselves. All other results of peer reviews “may” be disclosed publicly, “subject to the agreement of the competent authority that is the subject of the peer review”.

Interestingly, some amendments aim at reducing the scope of data available to the public. Article 24 (5) of the Commission’s proposal provides that decisions which the EBA takes in the scope of its work “shall be made public and shall state the identity of the competent authority or financial institution concerned and the main content of the decision, having regard to the legitimate interest of financial institutions in the protection of their business secrets”. Amendment 187 deletes the text after the last comma and replaces it by “unless such publication is in conflict with the legitimate interest of financial institutions in the protection of their business secrets or could seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system of the European Union”. The amendment is more restrictive but aims at protecting the functioning and integrity of the financial markets, which is within the scope of the Regulation. However, no provisions set how should be assessed whether financial markets experience a risk for their functioning and integrity because of the publication. The amendment formulation is included in Article 39 (5) of the OJ version.

<sup>58</sup> European Parliament, Committee on Economic and Monetary Affairs, *Report on the proposal for a Regulation of the European Parliament and of the Council establishing a European Banking Authority*, A7-0166/2010, 3 June 2010.

*Transparency: Hearing officials*

As no mention of the EP regarding the appointment of the chairman of the EBA is included in the Commission's proposal, amendment 208 sets that the Chairperson of the EBA shall be selected by the EP, after a hearing of candidates, on the basis of a shortlist elaborated by the Commission. However, Article 48 of the final OJ version states merely that the EP "may" after having heard the candidate selected by the board of supervisors "object to the designation of the selected person", without further clarification.

*Transparency: Reviewing the institution*

Amendment 264 states that the report reviewing the work of the EBA every three years should also, among others, review if "accountability and transparency in relation to publication requirements are adequate". In opposition to the ESRB Regulation, where this amendment didn't come through, it remains here in Article 81 (2) f) of the OJ version.

*Findings:* The EP has been able to introduce transparency clauses partially corresponding to its initial claims in 4 causes, which brings 2 points. However, because of the restrictive amendment 208, the result is reduced to 1.5 points. All successful amendments relate to BU2.

## **II. Regulation establishing the European Insurance and Occupational Pensions Authority (EIOPA)<sup>59</sup>**

Peter Skinner (S&D) was appointed Rapporteur on this legislation. His report was adopted by 27 in favour, no against and five abstentions.

*– Transparency: Publishing information, hearing officials & reviewing the institution*

Amendment 57 to Article 6 sets as tasks for the EIOPA to "provide a database of registered financial institutions in the area of its competence and, where specified in the legislative acts referred to in Article 1 (2), at a central level", without explaining to whom it should be accessible. This is present without further clarification in Article 8 (2) j) of the final OJ version.

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<sup>59</sup> Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC, OJ L331/48, 15 December 2012.

Amendments 65, 78, 89, 101 and 130 are identical to amendments 100, 149, 187, 208 and 264 of the Margallo report on the EBA Regulation. They were here all adopted as in the EBA legislation.

*Findings:* Several modest progresses have been made as in the EBA Directive through five amendments. Therefore, the overall result is 2.5 points. All successful amendments relate to BU2.

*Remarks:* Interestingly, Article 3 on accountability of the EIOPA to the EP and the Council is neither present in the Commission's proposal nor in the Skinner report. It appears at first in the plenary amendments, suggesting that it results from a trilogue negotiation.

This is also the case of the provision of Article 8 (1) k) of the final OJ version, which states that the EIOPA should have as a task to “publish on its website, and to update regularly, information relating to its field of activities, in particular, within the area of its competence, on registered financial institutions, in order to ensure information is easily accessible by the public”.

### III. Regulation establishing European Securities and Markets Authority (ESMA)<sup>60</sup>

Sven Giegold's (Greens/EFA) report for this legislation was adopted by 31 in favour, no against and four abstentions.<sup>61</sup>

– *Transparency: Publishing information, hearing officials & reviewing the institution*

Amendment 44, 132, 169, 189 and 242 are identical to amendments 100, 78, 187, 208 and 264 of the Margallo report on the EBA Regulation. They were all successfully adopted as in the EBA legislation.

*Findings:* Progresses are those already observed in the EBA Regulation, without the EBA's restrictive amendment, which makes 2 points for the ESMA Regulation. All successful amendments relate to BU2.

60 Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC, L 331/84, 15 November 2010.

61 European Parliament, Committee on Economic and Monetary Affairs, *Report on the proposal for a Regulation of the European Parliament and of the Council establishing a European Securities and Markets Authority*, A7-0169/2010, 3 June 2010.

*Remarks:* As for EIOPA the provision of article 8 (1) k) of the final OJ version of the ESMA Regulation, states that the ESMA should have as a task to “publish on its website, and to update regularly, information relating to its field of activities, in particular, within the area of its competence, on registered financial institutions, in order to ensure information is easily accessible by the public”. This provision is not present in the EC proposal nor in the Giegold report and appears first as a plenary amendment to the first reading, therefore similarly suggesting that it results from trilogue negotiation.

#### IV. “Omnibus” Directive <sup>62</sup>

The “Omnibus” Directive aims at adapting 11 existing Directives to the new developments brought by the establishment of the ESRB and the ESAs. Antolín Sánchez Presedo (S&D) was appointed Rapporteur for this legislation. His report was adopted by unanimity.<sup>63</sup>

##### – *Transparency: Publishing information*

Amendment 24 sets that the Joint Committee of European Supervisory Authorities (JCESA) should publish “on its website” the list of identified financial conglomerates relevant for the activities of the ESAs. It should keep this list up-to-date, which should be available on the agencies’ website. This is maintained in the OJ version.

Amendment 28 provides that the appointment of the JCESA coordinator for single supervision shall be published on the website of the JCESA. This is also provided for in the OJ version.

Amendment 70 provides for more information on institutions being included in the register of the national supervision authorities to be published on the EIOPA’s website. This is included in the OJ version.

<sup>62</sup> Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority), L 331/120, 15 December 2010.

<sup>63</sup> European Parliament, Committee on Economic and Monetary Affairs, *Report on the proposal for a Directive of the European Parliament and of the Council amending Directives 1998/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority*, A7-0163/2010, 18 May 2010.

Provisions of amendment 96 on the publication of prospectuses of the ESMA are also present in the OJ version.

Amendment 121 sets that the ESMA “shall establish a register of all investment firms in the Union. The register “shall be publicly accessible and [...] be published on its website. Where a competent Authority has withdrawn an authorisation [...] the withdrawal shall be published in the register for a period of five years”. Even if the wording of the OJ version is slightly different, the content remains the same: “ESMA shall establish a list of all investment firms in the Union. The list shall contain information on the services or activities for which the investment firm is authorised and it shall be updated on a regular basis. ESMA shall publish and keep up-to-date that list on its website.”

Amendment 224 provides that the “name of each credit institution to which authorisation has been granted shall be entered in a list. The European Banking Authority shall publish that list on its website and shall keep it up-to-date”. It has been fully accepted.

Amendment 352 sets that “the Member States should send to ESMA and to the Commission a list of the categories of bonds together with the categories of issuers authorised to issue bonds [...]. The Commission and ESMA shall immediately forward that information to the other Member States together with any comments they consider appropriate and shall make the information available to the public on their website.” The wording is different in the OJ version but the same regarding the content.

*Findings:* The transparency provisions of the Omnibus Directive relate purely to publication of information from the three ESAs. An important amount of EP amendments have directly passed through the legislative process in their full content and bring considerably higher levels of social accountability. Therefore this Directive receives 6 points. As the Directive fixes the relations of national supervisory authorities with the three ESAs, the successful amendments relate all to the power shift BU2.

#### • **Capital Requirement Regulation (CRR)**<sup>64</sup>

The CRR is one of the two legislative acts, with the Capital Requirement Directive (CRDIV), which set extensive new rules to fill in the loopholes of the existing banking rules, which have been revealed by the banking crisis. It sets harmonised EU levels of solvency requirements, liquidity coverage ratios (LCR) and equity levels and transposes

<sup>64</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, L 176/1, 27 June 2013.



the international Basel III agreement to the EU, while removing the earlier possibilities for derogations and options. This set of rules at the EU level has been coined the Single Rule Book and has to be further developed by the EBA. Therefore, this legislation relates to power shift BU6.

Othmar Karas (EPP) has been appointed Rapporteur on this file. His report was adopted on 14 May 2012 by unanimity of 44 votes in favour, no against and no abstention.<sup>65</sup>

– *Transparency: Publishing information*

In an amendment to Article 110, the report provides that the EBA shall maintain a publicly available database of all regional governments and local authorities in the EU which are considered as exposures to the central government. This provision is maintained in the final Regulation.

– *Transparency: Reviewing the Regulation*

The report introduced Article 483a calling for the review of CRR taking into account whether the tools created by this Regulation are “effective, efficient and transparent”. It has been kept in the final legislation.

*Findings:* This Regulation sets rules of functioning for the banking sector in the EU. In some cases the EBA or the ESRB are included in the provision regarding some supervisory tasks. The Regulation does not include new prerogatives for these supervisory bodies; this is why the Regulation does not include any provisions regarding the hearing of EU officials or elected decision-makers. Also, most of the transparency amendments, which have not been presented here, are directed to credit institutions themselves, in order for them to increase the clarity of their books towards supervisory bodies. In this sense, these amendments are not directed to the transparency, and therefore social accountability, of economic governance itself, as applied by EU bodies or institutions.

We can observe that two transparency amendments related to the EBA have been passed successfully through the legislative process. This Regulation gains therefore 2 transparency points.

• **Capital Requirement Directive (CRDIV)**<sup>66</sup>

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65 European Parliament, Committee on Economic and Monetary Affairs, *Report on the proposal for a Regulation of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms*, A7-0171/2012, 12 June 2012.

66 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment



The CRDIV completes the CRR and through this the Single Rule Book by setting series of rules which have to be implemented and supervised at the national level by the competent authorities. To this extent, the legislation also triggers power shift BU6.

Othmar Karas (EPP) was also Rapporteur on this legislative act, whose report was voted on the same day that the CRR, on 14 May 2012 by a near unanimity of 43 votes in favour, one against and no abstentions.

– *Transparency: Publication of information*

The report introduces Article 89a which provides that institutions benefiting from the ECB's LTRO shall disclose the profit made out of these LTRO. Even if this amendment does not require more transparency from the ECB itself it allows to increase the transparency of its policy by assessing its consequences. This amendment is not present as such in the final Directive but Article 161 (9) on review and report of the final legislation states that the EBA shall submit a report to the Commission on the use of the LTRO by financial institutions and that the Commission, based on that report, shall address a report to the Council and the EP on the same topic. Even if this measure does not allow for direct transparency to the EP or to the wider public, it allows for some transparency on the LTRO through the Commission.

*Findings:* The CRD is directed to the competent supervisory authorities of the Member States. Therefore it does not include high number of transparency requirements regarding EU bodies or institutions, as it mostly fixes the obligations of national supervisory institutions and credit institutions. Among the relevant amendments found in this Regulation, one has been partially adopted in the final legislation. Therefore, the Directive gains 0,5 transparency point.

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firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, L 176/338, 27 June 2013.

## 2. SSM: SINGLE SUPERVISORY MECHANISM

- **Regulation on conferral of tasks to the ECB in the context of the SSM**<sup>67</sup>

This Regulation is one of the two Regulations adopted to allow the ECB to endorse the supervision of credit institutions in the EU. Therefore, it relates to BU4. This Regulation of the Council has been adopted through the procedure of consultation of the EP. However, the EP has requested to be put on a same level with the Council in the legislative process, threatening to block the decision-making process in both Regulations. This has succeeded and has allowed for the EP to have a stronger voice on the legislation.

Marianne Thyssen (EPP) was appointed Rapporteur on this legislative process. Her report was adopted on 29 November 2012 by 32 votes in favour, 11 against and four abstentions.

- *Transparency: Publication of information*

An amendment to Article 4 (1) h) allows, if necessary, for the publication of the results of the stress-tests carried out by the ECB. This remains in the final legislation.

The report introduces changes to Article 5 (3) on the SSM, providing that the ECB shall adopt and make public a framework to organise the practical modalities of the supervision. This is present in Article 6 (7) on the final Regulation.

Also, the report has introduced the publication of the internal rules setting out the relation between the Governing Council and the Supervisory Board.

- *Transparency: Hearing officials*

The report brings several successful changes to Article 17 on accountability and reporting. It provides that the Chair of the Supervisory Board of the ECB shall present the annual SSM report “in public” to the EP. It also requires that the Chair “shall” participate to hearings in the EP on the execution of the supervisory tasks and provide “in camera” information to ECON. This is slightly different in Article 20 of the final Regulation as the information shall be only given to the Chair and the Vice-Chairs of the competent committee.

*Findings:* The reports allows for several successful transparency-related amendments. The six amendments mentioned have been adopted fully; this makes six transparency

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<sup>67</sup> Council Regulation (EU) No 1024/2013, L 287/63, 29 October 2013.

points and one may be added due to the engagement of the EP to put itself at the same level than the Council in the legislative process. This makes a total of 7 points, which are all allocated to BU<sub>4</sub>.

- **Amendments of EBA in the context of the SSM<sup>68</sup>**

As part of the SSM, the EBA Regulation was amended. Sven Giegold (Greens/EFA) was appointed Rapporteur on this legislation, with impact on power shift BU<sub>5</sub>. His report was adopted on 28 November 2012 by 34 in favour, seven against and two abstentions.<sup>69</sup>

- *Transparency: Publishing information*

The report adds that the EBA “shall provide appropriate disclosures of the results” of Union-wide stress tests conducted by the Authority “for each participating financial institution”. The wording of article 1 (11) the OJ version is less binding: “Where [...] Union-wide assessments are carried out and the Authority considers it appropriate to do so, it shall disclose the results for each participating financial institution.”

Also the report states that the Chair and Executive Director of the EBA shall make “public meetings held and hospitality received. Expenses shall be recorded publicly in accordance with the staff Regulation of the European Commission”. This remains as Article 1 (27) and (28) of the OJ version.

*Findings:* One full amendment came through regarding the publication of public meetings and hospitality received by the Chair and Executive Director of the EBA. However, it is unclear if EBA staff is, intrinsically, already subject to staff Regulations of the Commission. A half accepted amendment is also recognisable. Therefore the Regulation obtains 1.5 points which relate to BU<sub>5</sub>.

- **EP-ECB Interinstitutional Agreement (IIA) in the context of the SSM<sup>70</sup>**

<sup>68</sup> Regulation (EU) No 1022/2013, OJ L287/5, 29 October 2013.

<sup>69</sup> European Parliament, Committee on Economic and Monetary Affairs, *Report on the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority) as regards its interaction with Council Regulation (EU) No .../.... conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions*, A7-0393/2012, 3 December 2012.

<sup>70</sup> Interinstitutional Agreement between the European Parliament and the European Central Bank on the practical modalities of the exercise of democratic accountability and oversight over the exercise of the tasks conferred on the ECB within the framework of the Single Supervisory Mechanism, OJ L 320/1, 30 November 2013.

The adoption of an IIA does not follow the OLP. Part of the political agreement in trilogue negotiations on the banking union and the SSM in March 2013 included the adoption of an IIA between the ECB and the EP, which would set the accountability framework towards the EP, including transparency requirements, for the SSM.<sup>71</sup> This legislation is relevant for power shift BU4.

Following a letter of Sharon Bowles (ALDE), Chair of ECON, to the Conference of Presidents of the EP, Martin Schulz, President of the EP, proposed on 18 April 2013 to follow Bowles' approach in the negotiation and "expressed his willingness" to engage politically with the President of the ECB, Mario Draghi, on the IIA. The Conference of Presidents agreed to follow Schulz' proposal.<sup>72</sup> ECON was therefore mandated to endorse the negotiations with the ECB, even if Carlo Casini (EPP), Chair of the Committee on Institutional Affairs (AFCO) was officially appointed Rapporteur. The legislation was passed through the simplified procedure used for IIA.

According to a document provided to the author by an assistant of an MEP member of the ECON negotiating team, the first preparatory meeting of the EP negotiating team took place on 25 April 2013.<sup>73</sup> This document entails a list of political priorities regarding the IIA, although no draft outline of the desired wording of the IIA. Considering these limitations, these political priorities remain a useful basis to compare with the final IIA in order to assess to which transparency requirements the EP was able to push forward in the final agreement.

Thanks to this comparison several objectives included in the political priorities of the negotiating team are recognisable in the final IIA. These are as follows.

– *Transparency: Publishing information*

Article 1 provides for the publication of the Central Bank's SSM annual report on the SSM website. It also states that the ECB shall expand its "information e-mail hotline" to SSM-related questions. The feedback shall be turned into a public FAQ section.

Article 3 on responding to questions the ECB is required to answer to EP's questions "within five weeks of their transmission to the ECB" and a part of both institutions' websites shall be dedicated to them.

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71 Regulation (EU) 1024/2013, Art. 17 (9)

72 European Parliament, Conference of Presidents, Minutes, PE 508.766/CPG, 18 April 2013, p. 12.

73 See Annex I

Article 4 on access to information sets that the ECB shall provide the EP's competent committee at least with a "comprehensive and meaningful record of the proceedings of the Supervisory Board that enables an understanding of the discussions, including an annotated list of decisions". It also provides for the *ex-post* publication of information on the winding-up of a credit institution, supervisory fees and their methodological explanation and a guide to the ECB's supervisory practices, which all are decisions of high social accountability relevance.

The chapter on the adoption of acts by the ECB requires the ECB to inform the EP's competent committee "of the principles and kinds of indicators or information it is generally using in developing acts and policy recommendations".

– *Transparency: Hearings*

Article 1 provides that the ECB shall present its EP annual report at a public hearing. These reports should be quarterly during the setting-up of the SSM ; however no hearings are foreseen there.

Article 2 on hearings and confidential oral discussions sets a framework for ordinary and *ad hoc* public hearings and exchanges of view in front of the EP's permanent committee.

The chapter on selection procedures requires a public hearing of the ECB's candidate for the Chair and the Vice-Chair of the Supervisory Board of the SSM, to which a vote should follow by the EP competent committee and the EP plenary.

*Findings:* The EP-ECB IIA is an attempt to fill in the accountability gap raised by the diagonal power shift implied by the delegation of the supervision of credit institutions from national supervisory authorities to the ECB. The EP report on Regulation 1024/2013 paved the way for the IIA. It represents a strong gain for the transparency of the SSM for which the EP acquires recognition. As identified here, the EP was able to achieve notable gains which allow for transparency towards the EP but also directly to citizens. Certainly this IIA does not reach fully transparency of the SSM but the very nature of the supervision does not allow for a full transparency. Regarding the provisions pushed forward by the EP, the IIA gains 7 transparency points, all allocated to BU4.

## B. FISCAL AND MACROECONOMIC POLICY

| Six Pack   | LEGISLATION | PROCEDURE      | RAPPORTEUR    |
|--|-------------|----------------|---------------|
| Implementing the excessive deficit procedure       | 2011/1177   | 2010/0276(CNS) | Feio          |
| Requirements for budgetary frameworks              | 2011/85     | 2010/0277(NLE) | Ford          |
| Enforcement of budgetary surveillance              | 2011/1173   | 2010/027S(COD) | Goulard       |
| Correct macro-economic imbalances (MIP)            | 2011/1174   | 2010/0279(COD) | Haglund       |
| Surveillance and coordination of economic policies | 2011/1175   | 2010/0280(COD) | Wortmann-Kool |
| Correction macro-economic imbalances (MIP)         | 2011/1176   | 2010/02S1(COD) | Ferreira      |

### Two Pack

|  |          |                |          |
|--|----------|----------------|----------|
| Surveillance of MS with threatened financial stability | 372/2013 | 2011/0385(COD) | Gauzes   |
| Correction of excessive deficits                       | 473/2013 | 2012/0386(COD) | Ferreira |

TABLE 5B: RELEVANT FISCAL POLICY LEGISLATION

### 1. SIX PACK LEGISLATION

#### • Six Pack 1: Implementing the excessive deficit procedure<sup>74</sup>

The objective of this Council Regulation is to “lay down the provisions for speeding up and clarifying the excessive deficit procedure”. To this regard, it brings several amendments to Regulation (EC) No 1467/97 on the EDP.

#### *Provisions, power shifts and report*

FU1: Amendments to Article 1 of Regulation (EC) No 1467/97 operationalizes the debt criterion in the sense that it is taken into account in order to launch an EDP, before that deficits were the central criterion in assessing respect of budgetary discipline.

FU2: Amendments to Article 3 (4) a) and Article 5 (1) a) set a new expenditure rule in the framework of the EDP, as it provides that following Council recommendations or

<sup>74</sup> Council Regulation (EU) No 1177/2011, OJ L 306/33, 23 November 2011.

notices, the Member State shall report on government expenditure and revenue, allowing for a new assessment of the Council and if convenient new recommendations.

FU3: Amendments to Article 3 (4) and Article 5 (1) set an explicit goal for reduction of the structural deficit in case of EDP. It provides that the “Council shall request that the Member State achieve annual budgetary targets which [...] are consistent with a minimum annual improvement of at least 0.5 % of GDP as a benchmark”.

FU5: Amendment to Article 10 (1) a) states that the Council and the Commission shall “regularly monitor the implementation of action taken”. The Commission shall also send missions to the Member States to assess the actual economic situation in the country and regarding compliance with the objectives set by the Regulation. The ECB may participate to these missions.

FU6: Amendments to Article 5 to 8 provide for clear deadlines for the issuing of Council opinions on sanctions.

The Commission proposed this Regulation through the consultation procedure, which should imply that the EP had no legislative influence on it. However, the Regulation being part of a pack of 6 comprehensive legislative acts, one piece of legislation is necessary for the other to be efficient. Therefore, the EP ECON Committee required the Council to consider this Regulation to be adopted by the OLP, threatening that, to the contrary, it will block the other legislations.

Diogo Feio’s (EPP) report<sup>75</sup> on the Regulation was adopted on 19 April 2011 in ECON by 29 votes in favour, seven against and 10 abstentions.

#### *Transparency: Hearing officials*

FU1, FU2, FU3, FU5, FU6: The report introduces the Economic Dialogue in Section 1a in order to “ensure greater transparency and accountability”, which consists of public debates and hearings in an EP Committee regarding “Article 126 (8) TFEU on the macro-economic and budgetary surveillance undertaken by the Council and the Commission”. The EP may invite relevant decision-makers. This amendment is accepted and is even completed with further specifications, however also not binding, introduced as Article 2a.

#### *– Transparency: Publishing information*

<sup>75</sup> European Parliament, Committee on Economic and Monetary Affairs, *Report on the proposal for a Council Regulation amending Regulation (EC) No 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure*, A7-0179/2011, 2 May 2011.

FU1, FU2, FU3, FU5, FU6: An amendment to Article 4 sets in which timeframe the Council should make a decision public, if he decides to make it public. This provision appears unchanged in the final legislation.

*Findings:* Two amendments of the EP have been fully taken into account, which makes two points. The points shall be distributed for each (5) concerned power shifts, which makes a total of 10 points.

- **Six Pack 2: Requirements for budgetary frameworks**<sup>76</sup>

The objective of this Directive is according to Article 1 to detail “rules concerning the characteristics of the budgetary frameworks of the Member States”. This Directive had to be adopted through consultation but the Committee was also able in this case to force the Council to negotiate with it, also overriding the Treaty provisions regarding the legal base.

*Provisions, power shifts and report*

FU11: Article 4 ensures that “fiscal planning is based on realistic macroeconomic and budgetary forecasts” the Member States shall compare its forecasts with those of the Commission or “those of other independent bodies”. Significant differences shall be described.

FU12: Article 5 states that Member States shall adopt numerical fiscal rules in order to promote the compliance with the references values on deficit and debt from the TFEU.

FU13: Article 6 (1) b) provides that “independent bodies or bodies endowed with functional autonomy vis-à-vis the fiscal authorities of the Member States [based] on reliable and independent analysis” shall “effectively and timely” “monitor compliance with the [numerical fiscal] rules”.

Vicky Ford’s (ECR) report<sup>77</sup> on the Directive was adopted by ECON in April 2011 by 29 votes in favour, 14 against and no abstention.

– *Transparency: Publishing information*

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<sup>76</sup> Council Directive 2011/85/EU, OJ L 306/41, 23 November 2011.

<sup>77</sup> European Parliament, Committee on Economic and Monetary Affairs, *Report on the proposal for a Council Directive on requirements for budgetary frameworks of the Member States*, A7-0184/2011, 6 May 2011.



FU11: An important amendment of the report is Article 4 (1a) stating that the Commission shall make public the “methodologies, assumptions, and parameters that underpin its macroeconomic and budgetary forecasts” in order to be able to assess their accuracy at the moment of comparing it to the national government forecasts. This provision is present, unchanged, in Article 4 (2) of the final OJ version.

*Findings:* In this case we identify solely one amendment but of central importance and which remains as such in the final legislation. Therefore 1 point can be awarded to the Regulation.

- **Six Pack 3: Enforcement of budgetary surveillance**<sup>78</sup>

According to its Article 1, this Regulation “sets out a system of sanctions for enhancing the enforcement of the preventive and corrective parts of the Stability and Growth Pact in the euro area”. It has been adopted through the OLP.

- *Provisions, power shifts and report*

FU5: Article 4 (1) of the Regulation sets the possibility of retaining an interest-bearing deposit of 0.2 percent of GDP from Member States which deviate significantly from the MTO, in relation to the SGP.

FU8: Article 8 (1) and (2) foresees fines in case of statistical fraud by the Member States.

FU9: In Article 4 (2), Article 5 (2) and Article 6 (2), this Regulation provides that Council decisions on fines shall be adopted by Reverse Qualified Majority Voting (RQMV).

Sylvie Goulard’s (ALDE) report<sup>79</sup> on the Regulation was adopted on 19 April 2011 by 33 in favour, 14 against and no abstention.

- *Transparency: Hearings*

FU5, FU9: Article 3 is amended by the Regulation in order to introduce the Economic Dialogue to “discuss decisions taken pursuant to Articles 4, 5 and 6 of this Regulation”. This relates to decisions on interest-bearing deposits, non-interest-bearing deposits and fines.

<sup>78</sup> Regulation (EU) No 1173/2011, OJ L 306/1, 23 November 2011.

<sup>79</sup> European Parliament, Committee on Economic and Monetary Affairs, *Report on the proposal for a Regulation of the European Parliament and of the Council on the effective enforcement of budgetary surveillance in the euro area*, A7-0180/2011, 2 May 2011.

FU5, FU9: An amendment to Article 4 (5) adds the possibility for a Member State to request the EP to organise a public hearing if the Council “refuses to consider that the situation” that has led to the imposing of an interest-bearing deposit “has ceased to exist”. This is not as such in the final Regulation but we may assume that the amended Article 3 on Economic Dialogue mentioned above includes the case raised by this amendment. However, the formulation is then clearly less explicit.

The same applies to Article 6 on fines, as the amendment setting precise cases where the EP may call to a hearing or a public debate have been simply replaced by the provision of Article 3 stating “decisions taken pursuant to Articles 4, 5 and 6”.

*Findings:* Three amendments provide for the possibility of hearings related to the surveillance and decision-making of the Commission and of the Council. These are wrapped up in a lightened version in a single provision of the final legislation, the Economic Dialogue. Therefore, we may give 0.5 point per amendment, which makes at total of 1.5 point allocated to two power shifts, therefore 3.

• **Six Pack 4: Correction of excessive macro-economic imbalances (MIP)<sup>80</sup>**

The objective of this Regulation according to its Article 1 is to “lay down a system of sanctions for the effective correction of excessive macroeconomic imbalances in the euro area”. It was adopted through the OLP.

– *Provisions, power shifts and report*

FU5: Article 3 (1), (2) and (5) provides for sanctions such as interest-bearing deposits or fines which may be decided by the Council on recommendation of the Commission in relation to non-compliance to the Excessive Imbalance Procedure (EIP) as laid down in Regulation 1176/2011, which we will also examine.

FU9: According to Article 3 (3), Council decisions referred to in Article 3 (1) and (2) shall be adopted under RQMV.

Carl Haglund’s (ALDE) report<sup>81</sup> was adopted by ECON on 19 April 2011 by 39 in favour, 5 against and no abstentions, which records for a very high level of support.

80 Regulation (EU) No 1174/2011 of the European Parliament and of the Council of 16 November 2011 on enforcement measures to correct excessive macroeconomic imbalances in the euro area, OJ L 306/8, 23 November 2011.

81 European Parliament, Committee on Economic and Monetary Affairs, *Report on the proposal for a Regulation of the European Parliament and of the Council on enforcement measures to correct excessive macroeconomic imbalances in the euro area*, A7-0182/2011, 29 April 2011.

– *Transparency: Hearings*

FU5, FU9: The amendment introducing the Economic Dialogue is also present in Article 5a. It appears in the final legislation at Article 6 but on a more restrictive wording as it states specifically that it should take place regarding decisions on sanctions.

*Findings:* This legislation gains only 0.5 points. It has to be taken into account that it sets few provisions, as it is mainly focused on sanctions in the framework of the MIP. 0.5 point allocated to two power shifts results in 1 point.

• **Six Pack 5: Surveillance and coordination of economic policies<sup>82</sup>**

As explained in Article 1, this Regulation sets out the rules of the multilateral surveillance of stability and convergence programmes by Council and Commission, the European Semester, in order “to prevent, at an early stage, the occurrence of excessive general government deficits and to promote the surveillance and coordination of economic policies”. It has been adopted through OLP.

– *Provisions, power shifts and report*

FU10: The Regulation’s point (3) includes Section 1a which introduces the European Semester as an instrument of surveillance in the context of economic policy coordination. This includes the formulation of guidelines by the Commission and European Council, the submission of national reform programmes by the Member States, whose implementation shall be dully monitored.

FU3: Point (8) amending Article 5 (1) sets that the cyclically-adjusted budget balance shall be improved by 0.5 percent annually.

FU9: Point (9) amending Article 6 sets RQMV as the standard voting procedure in the European Semester.

FU10: Point (15) amending Article 11 foresees enhanced surveillance missions of the Commission to the Member States in the context of the European Semester.

Corien Wortmann-Kool’s (EPP) report<sup>83</sup> was adopted on 19 April 2011 by 27 in favours, 18 against and one abstention.

82 Regulation (EU) No 1175/2011, OJ L 306/12, 23 November 2011.

83 European Parliament, Committee on Economic and Monetary Affairs, *Report on the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies*, A7-0178/2011, 29 April 2011.

*– Transparency: Publication of information*

FU10: In point (4), amending Article 5, point 1 c) 4 subparagraph, the report requests an important point regarding binding social accountability. It sets that the “Commission shall make public a transparent, independent and reasoned assessment of the methodology of [...] projections” used as a benchmark for projections of the Member States in their stability programmes. This is partly included in the final Regulation in point 8 amending Article 5 as the “Commission shall make public the calculation method for [...] projections”. The final wording appears more restrictive.

FU3, FU9, FU10: Article 5 also states that subsequent Council recommendations following the mentioned Commission warning shall be made public. This is included in the final legislation.

FU10: In point 8 amending Article 9 (1) c) the report sets again that the Commission “shall make public a transparent, independent and reasoned assessment of the methodology of [...] projections”. Again, the final version is more restrictive.

FU3, FU9, FU10: The same provision is introduced for the issuing of the subsequent Council recommendation which the report requests to make public. Also, it is adopted by the final legislation.

*– Transparency: Hearings*

FU3, FU9, FU10: The Economic Dialogue is introduced as Article 2-ab of Section 1-Aa. It is part of the final legislation with a set of 7 cases where the Economic Dialogue may take place, as observable at point (4).

FU3, FU9, FU10: The introduction of the European Semester requires, according to the report, the EP to be fully involved “in order to increase transparency, ownership and accountability of the decisions taken”. It calls for an inter-institutional agreement to be adopted between EP, European Council and Commission. Even if the final legislation states that the EP has to be involved it doesn’t mention the conclusion of an inter-institutional agreement.

FU3, FU9, FU10: The report adds a new section 1Ab on the hearing “of the President of the euro group”. It states that it may be heard “at the request of the European Parliament or on his own initiative” on specified matters related to the economic situation in the Member States. This is part of the Economic Dialogue provisions of the final Regulation, however not so prominently visible. The topics on which the euro group President may be heard are here restricted to those considered in the Economic Dialogue. Therefore,

even if a new decision-maker is included in the hearings, no new context is allowed by the legislation for his interrogation.

*Findings:* Two amendments from the Wortmann-Kool report are fully present in the final legislation, whereas two other amendments are partially present. This results in 3 points. Regarding the hearing of decision-makers, report counts one amendment which is fully adopted and two which are partially. This results in two additional points, which brings the result to 5 points. Considering the allocation of points to the different power shifts, the final result is of 13 points.

- **Six Pack 6: Prevention and correction of macro-economic imbalances (MIP)<sup>84</sup>**

This Regulations sets out, according to Article 1, “detailed rules for the detection of macroeconomic imbalances, as well as the prevention and correction of excessive macroeconomic imbalances within the Union”. It has been adopted through the OLP.

- *Provisions, power shifts and report*

FU6: The Regulation sets the framework for an Excessive Imbalance Procedure (EIP) following some requirements of the EDP, with a preventive and a corrective arm. On a recommendation of the Commission, the Council may adopt a recommendation establishing the existence of an imbalance and requesting the concerned Member State to prepare a corrective action plan, as stated in Article 7 and 8.

FU6: The Commission shall monitor the implementation of the plan. For this purpose, the concerned Member State shall present regularly reports to the Commission and the Council. The Commission may carry out “enhanced surveillance missions” to the Member State concerned in order to further monitor the implementation of the plan, as provided for in Article 9 and 13.

FU9: Under RQMV the Council, on the basis of the Commission’s report, may adopt a resolution establishing non-compliance by the Member States, as provided for in Article 10 (4).

Elisa Ferreira’s (S&D) report<sup>85</sup> has been adopted on 19 April 2011 by ECON by 42 votes in favour, 4 against and no abstention, which shows a remarkable high level of support.

84 Regulation (EU) No 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances, OJ L 306/25, 23 November 2011.

85 European Parliament, Committee on Economic and Monetary Affairs, *Report on the proposal for*

– *Transparency: Publishing information*

FU6: In an amendment to Article 10 (5) on the decision to put in abeyance the EIP, the report states that the Council should “make its reasons public” to this regard. This provision is maintained in the final Regulation.

– *Transparency: Hearings*

FU6: The report adds Article 12a, which introduces a “dialogue” consisting of “public debates on macro-economic and budgetary surveillance undertaken by the Council and the Commission”. However, to the contrary of similar provisions in other Six Pack legislations, officials or decision-makers who may be invited to discuss are not specified, which may be interpreted as allowing for a wider scope of participants to the dialogue than in other legislations. The provisions of the final Regulation on this matter are more specific, therefore presumably more restrictive, as they are equal to the Economic Dialogue provisions included in other Six Pack legislations.

*Findings:* One amendment concerning the publication and explanation of decisions has been successfully included in the final legislation. Also, an amendment on the hearing of decision-makers has been partially adopted. This makes a total of 1,5 points for this Regulation.

## 2. TWO PACK LEGISLATION

Two Pack 1: Surveillance of MS with threatened financial stability<sup>86</sup>

According to its Article 1, this Regulation “lays down provisions for strengthening the economic and budgetary surveillance of Member State” which experience threats to their “financial stability or to the sustainability of their public finances” or are under external financial assistance. It is the first Regulation of the Two Pack and has been adopted through the OLP.

– *Provisions, power shifts and report*

FU10: Article 2 of the Regulation allows the Commission to subject to enhanced surveillance a Member State experiencing or threatened with serious difficulties with

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*a Regulation of the European Parliament and of the Council on the prevention and correction of macroeconomic imbalances, A7-0183/2011, 6 May 2011.*

86 Regulation (EU) No 472/2013 of the European Parliament and of the Council of 21 May 2013 on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability, OJ L 140/1, 27 May 2013.

respect to its financial stability which are likely to have adverse spill-over effects on other Member States in the euro area.

FU14: According to Article 7, where a “Member State requests financial assistance from one or several other Member States or third countries, the EFSM, the ESM, the EFSF or the IMF, it shall prepare, in agreement with the Commission, acting in liaison with the ECB and, where appropriate, with the IMF, a draft macroeconomic adjustment programme which shall build on and substitute any economic partnership programme under Regulation (EU) No 473/2013 and which shall include annual budgetary targets”.

The EP report<sup>87</sup> on this legislative act has been drafted by Jean Paul Gauzès (EPP) on 14 May 2012 by 25 in favour, 4 against and 13 abstentions, which underlines a strong support.

– *Transparency: Publication of information*

FU10: Amendment 22 sets that decisions taken by the Commission under enhanced surveillance should be made public. The amendment is included in Article 2 (3) of the final legislation.

FU14: Article 6 (6) of the proposal provides the possibility for the Member State subject to an adjustment programme to ask for technical assistance from the Commission or other Member States’ officials. Amendment 49 on this provision requires the publication of the macroeconomic adjustment programme and the assessment of its “social consequences”. Article 7 (8) of the final legislation includes the publication of the adjustment programme and a reformulation of the social consequences into “the expected distribution of the adjustment effort”.

– *Transparency: Hearings*

FU10: Amendment 38 states that under enhanced surveillance, the competent EP Committee may invite representatives of the Commission, the ECB or the IMF to participate to an Economic Dialogue. This remains in the final Regulation under Article 3 (9). However, the Economic Dialogue is not the subject of a full article as in other legislations.

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87 European Parliament, Committee on Economic and Monetary Affairs, *Report on the proposal for a Regulation of the European Parliament and of the Council 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*, A7-0172/2012, 25 May 2012.



FU14: Amendment 40 to Article 5 (1) provides that, following the adoption of a macroeconomic adjustment program, the Commission shall made public the “methodology, the economic and econometric underlying models and assumptions, including an estimation of the potential output and macroeconomic multiplier effects as well as any other relevant parameter underpinning the assessment of the sustainability of the government debt”. The provision is not included as such in the legislation but other transparency requirement appear in this article of the Regulation providing for the information of the EP and a certain level of transparency towards the wider public. Indeed, Article 7 (4) sets that the Commission shall inform the Chair and the Vice-Chair of the competent EP committee on the developments of the macroeconomic adjustment procedure in the concerned Member State. Article 7 (11) and (12) allow the EP to organise exchanges of views with the Member States concerned or members of the Commission.

*Findings:* Amendments 22 and 38 are fully integrated and amendment 40 and 49 are partly in the Regulation. This makes a total of 3 transparency points for this legislative act.

Two Pack 2: Correction of excessive deficits<sup>88</sup>

Article 1 on “Subject matter and scope” of Regulation 473/2013 provides for “common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area”. It is the second Regulation of the Two Pack and has been adopted through the OLP.

– *Provisions, power shifts and report*

FU2: The Regulation seeks to make that budgetary draft are consistent with their MTO and SGP and MIP recommendations.

FU6: Under EDP, introduction of the partnership programmes, which recognise specific priorities on which Members States should provide improvement and set higher reporting requirements.

FU10: The Commission should assess the budgetary projects of the Member States based on its own economic forecasts.

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88 Regulation (EU) No 473/2013 of the European Parliament and of the Council of 21 May 2013 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, OJ L 140/11, 27 May 2013.



FU13: Member States should establish independent bodies which would consider the compliance with numerical fiscal rules.

Elisa Ferreira's (S&D) report<sup>89</sup> was adopted on 14 May 2012 by 18 votes in favour, 12 against and 14 abstentions.

– *Transparency: Hearings*

FU2, FU6, FU10, FU13: Amendment 76 introduces Article 11a on the Economic Dialogue allowing the EP to invite “when appropriate” the President of the Council, the Commission, the European Council and the Eurogroup to discuss actions taken by their institution in accordance to the Regulation. Representatives of the Member States may be invited to participate to the exchanges of views. This is adopted as Article 15 in the final legislation.

*Findings:* As amendment 76 has been adopted in the final legislation, this allocates 1 point to each of the power shifts identified in this Regulation, which is a total of 4.

– *Results summary*

The following table sums up the power shifts and related transparency points identified in this chapter.

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89 European Parliament, Committee on Economic and Monetary Affairs, *Report on the proposal for a Regulation of the European Parliament and of the Council on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area*, A7-0173/2012, 29 May 2012.

| CODE | LEGISLATION  | POINTS PER<br>POWER SHIFT                 | 0   |
|------|--|---|-----|
| L1   | Establishment of the ESRB                              | BU1(2,5)                                  | 2.5 |
| L2   | Establishment of the EBA                               | BU2(1,5)                                  | 1.5 |
| L3   | Establishment of the EIOPA                             | BU2(2,5)                                  | 2.5 |
| L4   | Establishment of the ESMA                              | BU2(2)                                    | 2   |
| L5   | “Omnibus” Directive                                    | BU2(6)                                    | 6   |
| L6   | Capital Requirement Regulation                         | BU6(2)                                    | 2   |
| L7   | Capital Requirement Directive                          | BU6(0,5)                                  | 0.5 |
| L8   | Establishment of the SSM                               | BU4(7)                                    | 7   |
| L9   | Amendment of EBA in the context of SSM                 | BU5(1,5)                                  | 1.5 |
| L10  | Inter-institutional agreement EP - ECB                 | BU4(7)                                    | 7   |
| L11  | Implementing the EDP                                   | FU1(2), FU2(2), FU3(2),<br>FU5(2), FU6(2) | 10  |
| L12  | Requirements for budgetary frameworks                  | FU11(1)                                   | 1   |
| L13  | Enforcement of budgetary surveillance                  | FU5(1,5), FU9(1,5)                        | 3   |
| L14  | Correct excessive macro-economic imbalances (MIP)      | FU5(0,5), FU9(0,5)                        | 1   |
| L15  | Surveillance and coordination of economic policies     | FU3(4), FU9(4), FU10(5)                   | 13  |
| L16  | Prevent and correct macro-economic imbalances (MIP)    | FU6(1,5)                                  | 1.5 |
| L17  | Surveillance of MS with threatened financial stability | FU10(2), FU14(1)                          | 3   |
| L18  | Correction of excessive deficits                       | FU2(1), FU6(1), FU10(1),<br>FU13(1)       | 4   |

TABLE 6: TRANSPARENCY SCOREBOARD FOR THE FINANCIAL AND FISCAL LEGISLATION EXAMINED

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## Chapter III. Transparency and power shifts interrelation

By “turning over” the result summary of Chapter III, Table 6, and aggregating the results, we can recognize on which power shifts the successful EP transparency amendments had an impact.

Table 7 delivers valuable insight on the action of the EP on regarding transparency of the power shifts enabled by the new EU economic governance.

Indeed, the 5 power shifts related to financial policy gain 33,5 points, whereas the 12 power shifts concerning fiscal policy received 36,5 points, demonstrating clearly a higher level of preoccupation concerning financial policy.

Among financial policy the power shift relating to the establishment of the ESAs and the SSM gained most points as single power shifts, scoring 13 and 14 respectively. The lowest score was achieved by the enforcement of the EBA in the context of the SSM, presumably because the SSM itself was the focus of transparency requirements proposal.

Under fiscal policy, “earlier and higher surveillance” gains the highest score with 8, probably as it may be a provision having an impact on a higher number of Member States. The second scorers are the “need to improve structural balance with at least 0.5 percent annually” and RQMV in the EDP both with 6. These being also strong developments to more corrective and automatic measures, it is understandable that a higher engagement was showed on their transparency.

Interestingly, three power shifts do not gained any transparency requirements from the EP. Two of them a related to fines and one to the introduction a fiscal rules at the national levels. In these three cases the explanation may be that transparency requirements may not be particularly relevant as, in order to successfully address the transparency of the changes introduced by these rules, transparency should be increased in the institutions or bodies using these rules themselves. Therefore it is relevant to consider in these cases the transparency requirements added to RQMV or, in general, for the necessity of the concerned institution to publish information to the wider public or to explain

its actions in front of the EP. Furthermore, at the national level, the transparency of the “independent fiscal councils” may be further enhanced through the implementation of the Directive through the national parliaments.

| CODE | POWER SHIFT   | POWER SHIFTS<br>PER LEGISLATION   | POINTS |
|------|---|-----------------------------------|--------|
| BU1  | Establishment of the ESRB   | L1(2,5)                           | 2.5    |
| BU2  | Establishment of the EBA, EIOPA, ESMA   | L2(2,5), L3(2,5), L4(2),<br>L5(6) | 13     |
| BU4  | Establishment SSM   | L8(7), L10(7)                     | 14     |
| BU5  | Enforcement of the role of the EBA in the SSM   | L9(1,5)                           | 1.5    |
| BU6  | Single Rule Book for supervision in the EU  | L6(2), L7(0,5)                    | 2.5    |
| FU1  | Operationalization of the debt criterion  | L11(2)                            | 2      |
| FU2  | New expenditure rule  | L11(2), L18(1)                    | 3      |
| FU3  | Need to improve structural balance with at least 0,5 percent of GDP annually                        | L11(2), L15(4)                    | 6      |
| FU5  | Interest bearing deposit of 0,5 percent of GDP in case of significant deviation of MTO              | L11(2), L13(1,5),<br>L14(0,5)     | 4      |
| FU6  | Extra monitoring under EDP  | L11(2), L16(1,5),<br>L18(1)       | 4.5    |
| FU7  | Fines at 0,2 percent of GDP   | -                                 | 0      |
| FU8  | Fine to maximum 0,2 percent of GDP in case of statistical fraud                                     | -                                 | 0      |
| FU9  | Decisions on sanctions in EDP with RQMV   | L13(1,5), L14(0,5),<br>L15(4)     | 6      |
| FU10 | Earlier and higher surveillance for problem countries   | L15(5), L17(2), L18(1)            | 8      |
| FU11 | National budgetary processes have to be based on independent macro-economic projections             | L12(1)                            | 1      |
| FU12 | Member States have to introduce numerical fiscal rules  | -                                 | 0      |
| FU13 | Member States have to establish independent fiscal councils to monitor compliance with fiscal rules | L18(1)                            | 1      |
| FU14 | Macroeconomic adjustment programmes   | L17(1)                            | 1      |

**TABLE 7: TRANSPARENCY SCOREBOARD FOR THE POWER SHIFTS EXAMINED**

The low level of transparency requirements on the macroeconomic adjustment programmes is however more worrying. Even if the legislation concerned seemed to

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represent an elegant way to introduce the *ad hoc* solutions triggered by the sovereign debt crisis into the EU legal order, the EP has not been able or willing to add further transparency to their negotiation or development. This may be a desired effect, as keeping the procedure in a low-accountability limbo may increase Member States compliance to fiscal rules. Indeed, macroeconomic adjustment programmes are the result of the request for financial help, normally related to the inability to maintain budgetary discipline.

Generally, the impact of the second co-legislator, the Council, has to be underlined, as the EP's ability to pass an amendment through the legislative process may be assigned to the EP's negotiations skills or to the willingness of the Council to allow the amendments. This is particularly relevant considering the fact that the EP "does not always benefit from trilogues"<sup>90</sup> against the Council. This will be addressed in Chapter IV.

Following this assessment of transparency amendments per power shift, a further step would be to consider the direction of power shifts as identified in Chapter I in order to determine in which type of power shifts the EP has been able to pass transparency requirements.

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<sup>90</sup> Raya Kardasheva, *Trilogues in the EU legislature*, Research Paper, Department of European and International Studies, King's College London, London, 2012, p. 21. Available at: <http://ssrn.com/abstract=2119912>, (consulted on 02.05.2014).

| CODE  | REVISION              | ORIGIN           | END  | TRANSPARENCY POINTS |
|---|-----------------------|------------------|--|---------------------|
| <i>BUI</i>  | <i>Diagonal</i>       | DiN              | DeEU   | 2,5                 |
| <b>BU2</b>  | <b>Horizontal</b>     | DiEU             | DeEU   | 13                  |
| <i>BU4</i>  | <i>Diagonal</i>       | DiN              | DeEU   | 14                  |
| <b>BU5</b>  | <b>Horizontal</b>     | DiEU             | DeEU   | 1=5                 |
| <i>BU6</i>  | <i>Diagonal</i>       | DiN              | DeEU   | 2,5                 |
| <i>FU1</i>  | <i>Diagonal</i>       | DiN              | RuEU   | 2                   |
| <i>FU2</i>  | <i>Diagonal</i>       | DiN              | RuEU   | 3                   |
| <i>FU3</i>  | <i>Diagonal</i>       | DiN              | RuEU   | 6                   |
| <b>FU5</b>  | <b>Horizontal</b>     | DiEU             | RuEU   | 4                   |
| FU6   | Ø                     | -                | -  | 4,5                 |
| <b>FTJ7</b>   | <b>Horizontal</b>     | DiEU             | RuEU   | 0                   |
| FU8   | <b>2 shifts V+H</b>   | Multiple 1       | Multiple 1                                   | 0                   |
| FU9   | Horizontal            | DiEU             | RuEU   | 6                   |
| FU10  | <b>3 shifts D+V+H</b> | Multiple2        | Multiple2                                    | 8                   |
| <i>FU11</i>   | <i>Diagonal</i>       | DiN              | DeEU   | 1                   |
| <b>FU12</b>   | <b>Horizontal</b>     | DiN              | RuN  | 0                   |
| <b>FU13</b>   | <b>Horizontal</b>     | DiN              | DeN  | 1                   |
| <b>FU14</b>   | <b>Vertical</b>       | DiN              | DiEU   | 1                   |
| <b>9 Horizontal</b><br><b>8 Diagonal</b><br><b>3 Vertical</b> |                       | 13 DiN<br>7 DiEU | 9 RuEU<br>6 DeEU<br>3 DiEU<br>1 RuN<br>1 DeN | 70                  |
| 20 Shifts   |                       |                  |  |                     |

TABLE 8: TRANSPARENCY SCOREBOARD FOR POWER SHIFTS, INCLUDING DIRECTION

**Indications:**

- \* : power shifts revised (9)
- Multiple1:
  - origin DiN, end DiEU
  - “ DiEU, “ RuEU
- Multiple2:
  - origin DiN, end RuEU
  - “ DiN, “ DiEU
  - “ DiEU, “ RuEU
- DiEU: Discretion at the EU level
- DeEU: Delegation at the EU level
- RuEU: Rules at the EU level
- DiN: Discretion at the national level
- DeN: Delegation at the national level
- RuN: Rules at the national level

Considering that in case of multiple power shifts the total points are allocated to each of the constitutive power shifts, the following redistribution emerges from the aggregation of the results.

| TYPE       | AMOUNT | SCORE | RATIO |
|------------|--------|-------|-------|
| HORIZONTAL | 9      | 33.5  | 3.72  |
| DIAGONAL   | 8      | 39    | 4.88  |
| VERTICAL   | 3      | 9     | 3     |

TABLE 9: AGGREGATED TRANSPARENCY SCOREBOARD INCLUDING DIRECTION OF POWER SHIFTS

By going into further detail of the types of power shifts, following results appear.

| TYPE         | AMOUNT | SCORE | RATIO |
|--------------|--------|-------|-------|
| DiN TO DeEU  | 4      | 20    | 5     |
| DiN TO RuEU  | 4      | 19    | 4.75  |
| DiN TO DeN   | 1      | 1     | 1     |
| DiN TO RuN   | 1      | 0     | 0     |
| DiN TO DiEU  | 3      | 9     | 3     |
| DiEU TO DeEU | 2      | 14.5  | 7.25  |
| DiEU TO RuEU | 5      | 18    | 3.6   |

TABLE 10: AGGREGATED TRANSPARENCY SCOREBOARD INCLUDING ORIGIN AND END OF POWER SHIFTS

Results collected in Tables 9 and 10 have to be addressed carefully. Indeed, the sample of power shifts is limited to 20 of 7 types and 70 amendments, which implies that the results are very much influenced by marginal mistakes. In the case of “DiN to DeN”, for instance, a single further transparency point would double the power shift’s ratio.

Taking this into account, cautious conclusions can be drawn. For instance, the level (national or EU) of a shift from discretion to non-discretion at the EU level did not have a notable influence on the amount of amendments: the ratio for “DiN to DeEU” and “DiN to RuEU” (diagonal) is 4,88. It is of 4,64 for “DiEU to DeEU” and “DiEU to RuEU” (horizontal).

However, a difference is perceivable when shifting from discretion at the EU level or at the national level to delegation (but not rules) at the EU level. In this cases, ratios are of 7,25 and 5 respectively. In this case, constraining discretion at the EU level in favour of delegation implies more transparent requirements than constraining discretion in favour of delegation at a lower and closer level of governance.

Furthermore, the only power shift leading to discretion at the EU level has a ratio of 3, which is one of the lowest. Both observations may imply that discretion at the EU level remains the position less affected by transparency and that however a high level of transparency is required when power becomes constrained by rules at the EU level.

Regarding shifts remained at the national level, the results imply a low level of transparency requirements. However the low amount of power shifts in this case (2) make conclusions even more difficult to be drawn.

More generally, the results of Table 9 suggest that a higher level of transparency is required when shifting horizontally and diagonally, i.e. to non-discretion, while vertical shifts are less the object of transparency requirements. This may originate in the influence of governments at the EU level, who will not require so much transparency as long as they can still practice discretion at this higher governance level, for instance at the Council. Governments would then agree more easily to EP amendments if they see their discretionary power jeopardized by delegation or rules. In all cases, the prevalence of transparency requirements adopted by the EP is slightly higher in horizontal situations rather than vertical ones, as respective ratios are 3.72 and 3.

The next chapter will try to further develop the possible reasons for this asymmetry by observing EP party politics and several forms of legislative process influence.



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## Chapter IV. Addressing the results

### A. EP Party Politics

The EP is a representative EU institution, in which directly elected MEPs act on behalf of their constituents. In the EP, the left-right divide plays an important role in the bargaining process of policy formation.<sup>91</sup> In the period of time taken into account in the framework of this research, 2010 to 2013, the EP had between 754 and 766 members divided in 7 political groups and non-attached members. As of 2010, the Group of the European People's Party (EPP) had 269 MEPs, the Group of the Progressive Alliance of Socialists and Democrats (S&D) had 190 MEPs, the Group of the Alliance of Liberals and Democrats for Europe (ALDE) 83 mandates, the Group of the Greens/European Free Alliance (Greens/EFA) 58, European Conservatives and Reformists Group (ECR) 56, the Confederal Group of the European United Left - Nordic Green Left (GUE/NGL) 34, the Europe of Freedom and Democracy Group (EFD) 21. The EP also included 33 non-attached members. The figures rose slightly for some groups with the accession of Croatia (EPP: 274, S&D: 195, ECR: 57 and GUE/NGL: 35) but didn't change fundamentally the balance of power in the assembly.<sup>92</sup>

The Committee for Economic and Monetary Affairs (ECON) preparing the reports tabled for parliamentary plenary on the legislation considered in this research (except for the special procedure for the Interinstitutional Agreement) had 45 full members in 2010 and 47 in 2013. Among those 47, 18 from EPP, 12 from S&D, 5 ALDE, 4 ECR, 3 Greens/EFA, 2 GUE/NGL, 2 EFD and 2 non-attached.<sup>93</sup>

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91 Gail McElroy, Kenneth Benoit, "Party Policy and Group Affiliation in the European Parliament", in: *British Journal of Political Science*, Vol. 40, No. 2, 2010, p. 384.

92 European Parliament, *Composition of Parliament*. Available at: <http://www.europarl.europa.eu/aboutparliament/en/004a50d310/Composition-of-Parliament.html>, (consulted on 01.05.2014).

93 European Parliament, Committee on Economic and Monetary Affairs, *Members*. Available at: <http://www.europarl.europa.eu/committees/en/econ/members.html>, (consulted 01.05.2014).

Among the 18 legislative acts considered in this research, 8 were led by EPP Rapporteurs (44 percent), 4 by S&D ones (22 percent), 3 ALDE (17 percent), 2 Greens/EFA (11 percent), 1 ECR (6 percent).

If being appointed Rapporteur by the Conference of Presidents on a legislative proposal of the Commission implies having an important leverage on the preparation of the draft report being discussed in Committee, it does not equal full control on its content. The draft report relies on the political preferences of its author but it has also to take into account diverging views inside of the Committee.<sup>94</sup>

In order to be tabled for plenary, the draft report has to be adopted by a majority of Committee members. These may table amendment to the draft report to shape its content. In a final step, the draft report and its amendments are put to vote. The higher the level of approval the report obtains in the Committee, the stronger will be its impact during trilogue negotiations, as other participant institutions will recognise a unified EP which decreases their room for manoeuvre in the bargaining process. This brings in a second perspective to the bargaining process further than left-right divide; it is the consensual working habit of EP Parliamentarians. This is for the benefit of the EP's voice towards other institutions but may however decrease the visibility of conflicting opinions inside of the assembly.<sup>95</sup>

Commonly, fellow Committee members monitor the work of the appointed MEP on behalf of the other political groups. These Shadow Rapporteurs act then as anchors for the Rapporteur, also during trilogue negotiations, in order to know the position of other groups and find the balance satisfying the widest range of political interests inside the EP.<sup>96</sup>

MEPs are elected in national constituencies on lists elaborated by national parties. It is therefore arguable that MEPs respond first to national party loyalty.<sup>97</sup> However, MEPs also present a high level of loyalty to their European Political Group (EPG). EPP, S&D,

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94 Rory Costello, Robert Thomson, "The policy impact of leadership in committees: Rapporteurs' influence on the European Parliament's opinions", in: *European Union Politics*, Vol. 11, No. 2, 2010, p. 236.

95 Pierpaolo Settembri, Christine Neuhold, "Achieving Consensus Through Committees: Does the European Parliament Manage?", in: *Journal of Common Market Studies*, Vol. 47, No. 1, 2009, p. 148.

96 Christine Neuhold, "The "Legislative Backbone" keeping the Institution upright? The Role of European Parliament Committees in the EU Policy-Making Process", in: *European Integration online Papers*, Vol. 5, No. 10, 2001, p. 7.

97 Emanuel Emil Coman, "Reassessing the Influence of Party Groups on Individual Members of the European Parliament", in: *West European Politics*, Vol. 32, No. 6, 2009, p. 1112.

ALDE and Greens/EFA MEPs voted in high proportion consistently with their supra-national political group.<sup>98</sup> Indeed, by having a united position, each political group can have a stronger voice in the bargaining process towards other political groups.

Political bargaining in the EP has lead Transnational Party Federations (TPF) having to develop notably from very loose organisations to more collaborative and coordinative structures, or at least being willing to do so. TPFs adopted therefore positions on an always broadening amount of issues, following the increasing competences of the EP, and taking into account the preferences of their member parties at the national level.<sup>99</sup> This wide range of national interests to be managed contributes to the fact that platforms, programmes and manifestos use a very broad language in some cases but does not precludes political divergences to be recognisable by the comparison of these documents from different EU-wide political parties.

It must however be recalled that TPFs and EP political groups do not overlap completely. This is recognisable among the four biggest political groups. The EPP political group in the EP is composed of MEPs members of EPP-affiliated parties and MEPs members of a party unaffiliated to the EPP. The Socialists & Democrats (S&D) group is composed of members of the Party of European Socialists (PES) and 3 unaffiliated parties. The ALDE group is composed of 2 parties and independent politicians. The Greens-European Free Alliance (Greens/EFA) group is similarly composed of 2 parties, 2 unaffiliated parties and independent politicians. Even if this brings heterogeneity inside political groups, we have seen that it does not preclude a high level of vote cohesion inside the groups.

Indeed, this heterogeneity is considerably low. In the case of the EPP it is very low due to the existence of only one unaffiliated party in the group. This could be also said for the S&D group were only three parties are not members of the TPF compared to more than 20 affiliated parties. The two main components of ALDE were the European Liberal, Democrat and Reform party (ELDR) and the European Democratic Party (EDP). However in November 2012, the ELDR changed its name to Alliance of Liberals and Democrats for Europe Party (ALDE) to “strengthen links with the European Parliamentary group”.<sup>100</sup> Regarding the EPD, it has lost momentum when its Italian

98 Monika Mühlböck, “National versus European: Party Control over Members of the European Parliament”, in: *West European Politics*, Vol. 35, No. 3, 2012, p. 625.

99 Natalia Timușă, Simon Lightfoot, “Europarties: Between the processes of ‘deepening’ and ‘widening’”, in: *Acta Politica*, No. 49, 2014, p. 1.

100 Alliance of Liberals and Democrats for Europe Party, *About the ALDE Party*. Available at: <http://www.aldeparty.eu/en/about/the-alde-party>, (consulted on 02.05.2014).

delegation left. In April 2014, it was composed of 8 MEPs, 5 of them from France.<sup>101</sup> This level of heterogeneity is higher in the Greens/EFA but still not critical, as the European Free Alliance in the EP consists of 7 MEPs only.<sup>102</sup>

Therefore, TPF political documents can be as much used as a basis for political preference comparison as political group documents.

We can recognise several preferences across TPFs or political groups, regarding the question of transparency of EU institutions in relation with economic governance.

– *EPP*

The EPP adopted a party platform in October 2012 at the EPP Statutory Congress in Bucharest. This was the first adoption of a new platform since 1992. Under the heading “Closer to Citizens – The Future of the EU institutions”, the document calls to “further develop a more democratic, transparent and efficient Europe”, mentioning the fact the EU citizens “feel that they have no influence on EU decision-making, [they] turn their back on community projects”.<sup>103</sup> Interestingly, the next proposal underlines that “EU institutions, therefore, in close partnership with the Member States, must ensure that the citizens can have confidence in the effectiveness, efficiency and real added value of Union programmes”.<sup>104</sup> Further, it points out that having access to all “decisions and information”<sup>105</sup> provided by the EU in their national language can be an essential element of reconciliation between the EU and its citizens.

Other considerations comprising transparency of EU decision-making underline that the hierarchy of legislation has to be clarified in order to improve citizens’ understanding of the EU and that EU institutions and that the community method has to be strengthened.

Regarding the development of the Euro, the platform calls to the reinforcement of economic governance briefly describing the functioning of the Six Pack and the role of the Commission and the Council in this regard. The EP is not mentioned.<sup>106</sup>

101 Parti Démocrate Européen-European Democratic Party, *Délégation PDE au Parlement européen*. Available at: <http://www.pde-edp.eu/fr/organisation/parlement-europeen>, (consulted 02.05.2014).

102 European Free Alliance, Members. Available at: <http://efa.greens-efa.eu/266-members.html>, (consulted 02.05.2014).

103 EPP Statutory Congress, *Party Platform*, Bucharest, 18 October 2012, p.42. Available at: <http://www.epp.eu/sites/default/files/content/EN%20with%20cover.pdf>, (consulted 02.05.2014).

104 EPP Statutory Congress, op. cit., p. 42.

105 Ibid.

106 Ibid., p. 43.

We can here observe that the EPP programmatic translation of a “more democratic, transparent and efficient Europe” and of making EU citizens feel that they have influence in the EU is, according to this document, increasing confidence in effectiveness, efficiency and real added value of the EU and enhance the clarity of the functioning of the EU, but not necessarily on having a bigger say on issues or being able to make decision-makers more accountable.

This understanding of the use of transparency in accountability is conflicting to some extent with the transparency conception used in the framework of this research. Indeed, the EPP calls the community-method to be reinforced, but it does not ascribe to the EP the role of an institution responsible of scrutinising other EU institutions so to contribute to transparency.

However, the aim of clarifying legislation is in line with transparency, but the question remains of its ability to foster social accountability, as decision-makers do not seem to be pushed to present more background explanation for their action. Clarity seems to refer to documents that already exist, but does not aim at fostering a deeper “culture of explanation” in the institutions towards the public. Indeed, the platform does not attribute to citizens the role of entering in dialogue with institutions or making them accountable.

– S&D

In its general resolution adopted at its Brussels Congress of September 2012, the PES sees different levels of transparency and “ownership” between decision-making at the EU level and lower levels of governance.<sup>107</sup> In order to re-establish people’s trust in and ownership of democracy, the PES calls to reinforce transparency and accountability in political decision-making and in the functioning of political actors.<sup>108</sup> It also assumes that this will lead to more responsible, and progressive, decision making at EU level and, besides political representation, points at the importance to increase “citizens’ participation”, mentioning participatory democracy, in order to foster the legitimacy of the legislative process.<sup>109</sup>

107 PES Congress Resolution, *Together for the Europe we need*, Brussels, 29 September 2012, p. 2. Available at: <http://www.pes.eu/en/blogs/zita-gurmais-blog/together-europe-we-need>, (consulted on 04.05.2014).

108 Ibid., p.7.

109 PES Congress Resolution, p. 2.

Regarding economic governance, the resolution underlines that Europe has to “restore financial stability [and] assist its Member States to achieve sustainably balanced budgets”. It also calls the EMU to be more “coordinated and integrated”.<sup>110</sup>

A broader understanding of transparency seems to emerge from these conceptions. In this case, citizen’s participation is underlined and participatory democracy is mentioned. Even if the object of this research is not participatory democracy as such, social accountability through transparency implies an active role of the citizenry in the control of institutions. No explicit link is made between transparency and the coordination and integration of economic governance, but considering the stronger focus on active citizenship than in the EPP platform, a higher degree of commitment to transparency, also in economic governance, may be expected.

– ALDE

In its resolution of November 2012 on the Sovereign Debt Crisis, the ALDE Party calls on its members to support three points: the creation of a full banking union, an assessment of the structural changes adopted in order to prevent future Eurozone crisis and explicitly to “take action to address the democratic deficit in respect of the operation of the single currency project including democratic oversight of the proposed banking union”.<sup>111</sup>

Furthermore, in its November 2012 resolution on the future of the EMU, the ALDE Party stresses “that deeper integration and stronger economic governance must be accompanied with an ambitious agenda to strengthen legitimacy, democracy and accountability within the EU”.<sup>112</sup>

It also calls its members to “decisive action with regard to the issue of the democratic legitimacy of EMU policymaking, based on the principle that each governing level, be it European or national, should be directly politically and fiscally responsible to the people, implying that each governing level has its own resources and that there is a direct democratic link between the decision-making body and the people”.<sup>113</sup>

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<sup>110</sup> Ibid., p. 3.

<sup>111</sup> Alliance of Liberals and Democrats for Europe Party, *Sovereign Debt Crisis Resolution*, Dublin, November 2012, p.2. Available at: <http://policycenter.eldr.eu/UserFiles/Files/sovereign%2odebt%20crisis.pdf>, (consulted on 04.05.2014).

<sup>112</sup> Alliance of Liberals and Democrats for Europe Party, *The Future of the Economic and Monetary Union Resolution*, Dublin, November 2012, p.1. Available at: <http://policycenter.eldr.eu/UserFiles/Files/The%20Future%20of%20the%20Economic%20and%20Monetary%20Union.pdf>, (consulted on 04.05.2014).

<sup>113</sup> Ibid., p. 2.

The resolution continues by calling “all EU institutions and Member States to act in order to encourage and facilitate public debate on European issues and safeguard accountability, for example by increasing transparency throughout the decision-making process”.<sup>114</sup>

We can recognise a high level of awareness for legitimacy in economic governance in the framework of the reformed EMU, also stressing its importance in financial supervision. To this purpose, the resolution explicitly states the question of transparency of decision-making.

The language of the resolution is also remarkable as it does not mention the EP as the tool to increase democratic legitimacy but uses the term “people” and that the “democratic link” should lead to the people. This leads for a wider conception of accountability, which may not only consider the EP but also other means of accountability to the broader public. This leaves much room for manoeuvre for social accountability as it was investigated in this work.

– *Greens/EFA*

In its resolution from April 2011 on the “Green alternative for European economic governance” the European Green Party (EGP) calls to enable Europe “to build a socially just and environmentally sustainable society based on a participative multi-national, multi-level democracy”<sup>115</sup> and points out at crisis management focusing too much on actions on an intergovernmental basis “rather than the more transparent and accountable community method”.<sup>116</sup>

Furthermore, the resolution supports “the establishment of a conference, on the model of the EU Convention, composed of representatives of regional, national and EU parliaments as well as of social partners and civil society [which] would provide advice to the EU institutions on the further build-up and implementation of the EU economic governance, thereby strengthening its democratic basis”.<sup>117</sup>

<sup>114</sup> Alliance of Liberals and Democrats for Europe Party, *The Future of the Economic and Monetary Union Resolution*, p.2.

<sup>115</sup> European Green Party, Budapest Council Meeting, *A pact for sustainable prosperity - The Green alternative for European economic governance - The crisis in the Eurozone Resolution*, Budapest, 3 April 2011, p. 2. Available at: <http://europeangreens.eu/content/pact-sustainable-prosperity-green-alternative-european-economic-governance-crisis-eurozone>, (consulted on 04.05.2014).

<sup>116</sup> Ibid.

<sup>117</sup> European Green Party, Budapest Council Meeting, op. cit., p. 3.



For the EU to be more democratic, the EGP underlines the necessity of improving the transparency of the decision-making process, more “joint governmental responsibility” between EU institutions and the national level and a new, short Constitutional text.<sup>118</sup>

In its resolution “What’s next for Europe” of 2012, the EGP recognises that there is a process of “de-democratisation” of decision-making at the EU level. Regarding financial supervision, it calls for an independent European banking authority being fully accountable to the EP.<sup>119</sup>

Moreover, it considers that “any deepening of integration, and notably any sharing of sovereignty, has to be accompanied by increased rights for parliaments, both at national and EU level, to scrutinise and co-decide, as well as through a large-scale public debate and innovative direct democratic processes”.<sup>120</sup>

The strong position of the EGP regarding direct democracy may explain why the question of transparency is less visible in the party’s document than in those of the ALDE party. As the EGP seems to support a strong increase of input-legitimacy through the direct inclusion of citizens in policy formulation, the importance of transparency may appear less relevant to counterbalance the lack of support for policy outputs.

The EP is mentioned several times and explicitly presented as the holder of democratic legitimacy but also as the institution which could increase citizens’ participation and, therefore, the legitimacy of EU decision-making.

– *Interaction: Winning majorities*

We have seen that the four biggest groups in the EP hold diverse positions on the overall issue of transparency in the EU decision-making process and in question of economic governance, on the basis of their party preferences. This diverging views lead to different preferences when drafting a report, tabling amendments and voting. However, considering the fact that no EP political group holds an absolute majority, coalitions are necessary which provide for a variety of aggregated preferences on the questions of transparency in economic governance.

118 European Green Party, Copenhagen Council, *Towards a Green democratic reform of the EU*, Copenhagen, 13 May 2012, p. 4. Available at: <http://europeangreens.eu/sites/europeangreens.eu/files/Resol%20Towards%20a%20Green%20Democratic%20Reform%20of%20the%20EU.pdf>, (consulted on 04.05.2014).

119 European Green Party, Athens Council, *What’s next for Europe? More union for the EU*, Athens, 11 November 2012, p. 1. Available at: [http://europeangreens.eu/sites/europeangreens.eu/files/news/files/Athens%20resolution%20as%20adopted\\_o.pdf](http://europeangreens.eu/sites/europeangreens.eu/files/news/files/Athens%20resolution%20as%20adopted_o.pdf), (consulted on 04.05.2014).

120 Ibid., p. 4.



| CODE | LEGISLATIVE ACT  | A      | B                                 | C       | D   |
|------|--|--------|-----------------------------------|---------|-----|
| L1   | Establishment of the ESRB                              | ALDE   | EPP-S&D-ALDE- Greens-ECR          | 40,4%   | 2.5 |
| L2   | Establishment of the EBA                               | EPP    | EPP-S&D-ALDE- Greens-ECR          | 41,7%   | 1.5 |
| L3   | Establishment of the EIOPA                             | S&D    | EPP-S&D-ALDE- Greens-ECR          | 41,2%   | 2.5 |
| L4   | Establishment of the ESMA                              | Greens | EPP-S&D-ALDE- Greens-ECR          | 41,7%   | 2   |
| L5   | Omnibus Directive                                      | S&D    | EPP-S&D-ALDE- Greens-ECR          | 41,2%   | 6   |
| L6   | Capital Requirement Regulation                         | EPP    | EPP-S&D-ALDE- Greens-EFD          | 42,9%   | 2   |
| L7   | Capital Requirement Directive                          | EPP    | EPP-S&D-ALDE-Greens-GUE/NGL-EFD   | 41,8%   | 0,5 |
| L8   | Establishment of the SSM                               | EPP    | EPP-S&D-ALDE- Greens-ECR          | 39,6%   | 7   |
| L9   | Amendment of the EBA m the context of the SSM          | Greens | EPP-S&D-ALDE- Greens-ECR- GUE/NGL | 39,4%   | 1.5 |
| L10  | Inter-institutional agreement EP - ECB                 | EPP    | No data                           | No data | 7   |
| L11  | Implementing the excessive deficit procedure           | EPP    | EPP-ALDE                          | 68,0%   | 10  |
| L12  | Requirements for budgetary frameworks                  | ECR    | EPP-ALDE-Greens- ECR              | 55,7%   | 1   |
| L13  | Enforcement of budgetary' surveillance                 | ALDE   | EPP-ALDE                          | 44,5%   | 3   |
| L14  | Correct excessive macro-economic imbalances (MIP)      | ALDE   | EPP-ALDE-Greens                   | 61,5%   | 1   |
| L15  | Surveillance and coordination of economic policies     | EPP    | EPP-ALDE                          | 68,4%   | 13  |
| L16  | Prevent and correct macro-economic imbalances (MIP)    | S&D    | EPP-S&D-ALDE- Greens              | 44,4%   | 1.5 |
| L17  | Surveillance of MS with threatened financial stability | EPP    | EPP-S&D-ALDE- Greens              | 44,5%   | 3   |
| L18  | Correction of excessive deficits                       | S&D    | EPP-S&D-ALDE- Greens              | 45,0%   | 4   |

TABLE 11: RELEVANT LEGISLATION AND WINNING MAJORITY SUPPORTING IT AT THE EP

A: Political affiliation of the Rapporteur.

B: Winning majority according to VoteWatch.eu.

C: Percentage of vote of the biggest group in the winning majority, calculated via VoteWatch.eu.

D: Transparency points.

Considering the power relations in the EP on the observed legislation, presented in Table 11, the EPP and ALDE have always been part of the winning majority in the 17 legislative acts for which data is available. In 3 cases both groups have been able to pass legislation alone. In 12 cases, the legislation is adopted through a grand coalition of S&P and EPP to which in most of the cases other parties participate. In 5 occasions, regarding the Six Pack, S&D does not vote with EPP.

The object of the votes is naturally on the whole legislation. Transparency matters may have played a role in the final decision, which would need further investigation of the political group and individual MEPs motivation, but may have been marginal in the final decision. This is why conclusions have also to be taken carefully regarding potential correlations between winning majority and transparency output. However, following observations and hypotheses may be raised, which would need further research to be falsificated, or not.

Interestingly, it is in the cases where S&D does not vote with EPP that the highest levels of transparency are achieved (L11, L15 in Table 11). In these cases EPP represents nearly 70% of the favourable votes to the legislation. A possible interpretation is that the Six Pack legislation being a central pillar of the new economic governance, which has been voted in times of high insecurity on the sustainability of the EMU, in September 2011, EPP wished to pass a hard-line legislation at any costs and could then only find ALDE as a supporter. The latter, considering its high transparency profile identified above, would benefit from time constraint and from its position as only ally in order to gain support from EPP for transparency-friendly provisions.

This allowed then EPP to underline its commitment for transparency, as understandable in an internal EPP document provided by an assistant to Corien Wortmann-Kool (EPP),<sup>121</sup> which presents the EPP political message to convey after the adoption of the Six Pack. The document stresses the EPP's raised ambition and achievement in enhancement of "accountability, transparency and democratic legitimacy" through the introduction

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121 Annex II

of “economic dialogue at the EU level” with the EP.<sup>122</sup> No concerns are raised on non-adopted transparency requirements although, as it was revealed in this research, the Six Pack included slightly less EP transparency amendment per legislation than the SSM (ratio of 4.92 for the former and 5.17 for the latter).

Regarding the practical translation of these wide policy goals in the legislation, Sylvain Maréchal, parliamentary assistant to Sylvie Goulard (ALDE) mentions that the question of transparency was a vital point of the whole Six Pack framework, less for the direct information of citizens than for the clarity of the process, which would then not allow countries to breach the rules anymore. Indeed, by decreasing the discretion of the Council, the compliance to rules is increased.<sup>123</sup>

Maréchal also points out at the risks of a too important level of transparency of the ESFS and the SSM in particular. He argues that a high level of transparency towards the EP, even if *in camera*, may lead to anti-euro MEPs to jeopardize the unity and survival of the single currency by publishing highly sensitive information on the balance sheets of certain banking institutions.<sup>124</sup>

These may be underlying reasons for the diverging levels of transparency requirements between the ESFS and the Six Pack.

Regarding S&D, if we consider the ratios of transparency points per legislation when the S&D votes in favour (3,23) and when it doesn't (5,60), the impression emerges of the S&D being a factor in the bargaining which does not foster transparency.

According to Alejandro Olmos Marcitllach, parliamentary assistant to Antolín Sánchez Presedo (S&D), the importance of transparency related agreements in the EP reports, especially in the Presedo report on the Omnibus Directive, which contains numerous provisions on the publication of information by the ESAs, was aiming at coming with a maximalist position in front of the Council in the trilogue negotiations.<sup>125</sup> The bet may have been to use them as bargaining chips during the negotiation in order to obtain political gains in other parts of the legislation. Therefore, one may argue that a consensual position may be rather transparency-unfriendly. But it does not preclude a

<sup>122</sup> Ibid, pp. 1 & 3.

<sup>123</sup> Sylvain Maréchal, Parliamentary Assistant to Sylvie Goulard, Telephone Interview, College of Europe, Natolin, 25 April 2014.

<sup>124</sup> Ibid.

<sup>125</sup> Alejandro Olmos Marcitllach, Parliamentary Assistant to Antolín Sánchez Presedo, Personal Interview, European Parliament, Brussels, 20 March 2014.

relatively high level of successful transparency amendments such as in the “Omnibus” Directive or the Establishment of the SSM.

However, Olmos Marcitllach also underlined that the main preoccupations of the negotiating team on the “Omnibus” Directive, in particular regarding transparency, related to Member States – EU relations. Indeed, it focused on the introduction of “correlation tables”, in order to make clearly understandable the transposition of Directive provisions in the national law.<sup>126</sup>

The transparency score of the “Omnibus” Directive is however fairly high (6) which may underline that S&D *per se* considers transparency to be relevant and worthwhile to defend, also in the way assessed in this research.

The role of the Greens/EFA may be similar to the one of S&D. It voted consistently in favour of legislation on financial supervision and the Two Pack but did not vote in favour of 3 Six Pack legislations. Despite its high transparency profile its participation in the winning majority does not seem to push for more transparency. Transparency amendments may have been used against other political benefits in the bargaining.

Regarding the influence of the political affiliation of the Rapporteur on the final level of transparency, there does not seem to be a clear correlation. Rapporteurs from a political group with a higher transparency profile do not necessarily produced a higher amount of successful transparency amendments

Even if the questions of transparency were not the main point of disagreement between political groups, also in the cases where no compromise could be achieved between EPP and S&D, the fact that some parties have more chances to be part of the winning majority allow for them to have a greater impact on the overall direction of the legislation and this may also include transparency matters. Transparency amendments may also be used as bargaining chips, as some political group may table an important number of amendments on this topic and withdraw them at a strategic moment in order to gain advances on other policy matters. Also, political groups less concerned with transparency may agree on transparency amendments in order to convince other groups to form a winning coalition.

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<sup>126</sup> Ibid.

## **B. The influence of the Council**

Throughout the legislative process concerning the legislative acts considered in this thesis, the Council consisted in majority of Heads of States or Governments from parties affiliated to the EPP. This remained so despite general elections in 2011 in Ireland, Spain, and Portugal, in 2012 in Greece and France and in 2013 in Italy. Clearly, national interests are the dominant factor in decision making at the Council, but political affiliation gains importance in the forging of coalition, especially in the case of the EPP.<sup>127</sup> This has certainly also had an incidence on the nature of the common position reached with the EP. In any case, some representatives in the Council may have wished to keep important levels of discretion with low transparency in the Council, while other may have desired more transparency, or automatism, to increase compliance. This may have played a role in negotiations with the EP. Unfortunately, for reasons of space and data this may not be further addressed in the framework of this research.

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<sup>127</sup> Běla Plechanovová, "National Actors in the Post-Lisbon EU: Should We Expect a Change of National Strategies?", in: *West European Politics*, Vol. 36, No. 6, 2013, p. 1216.

### C. The influence of experts and lobbyists

The EP is an open institution. MEPs are elected through direct elections in order to represent citizens and find the balance between conflicting agendas in order to defend their preferences. Also, in some cases, MEPs have to legislate on matters of high technicality on which they do not necessarily have sufficient expertise.

We may identify four options that MEPs develop in order to gain more technical knowledge on a specific matter or learn about the interests of important stakeholders. These are EP in-house expertise, technical reports ordered to external experts, public hearings and lobbyists.

It is clear that these gates for information are also a way for stake-holders to seek to influence decision-making to their interest. Indeed, a clear and precise presentation of particular interests to MEPs may help this interests being taken into account when drafting the legislation.

Due to the important number of legislative acts considered in this work and the limited ressources, the extent of attempted external influence on transparency requirements will be considered in the sole context of the establishment of the first pillar of the banking union, the SSM, that is to say in the context of a diagonal power shift from discretion at the national level to delegation at the EU level (BU4) and of an horizontal power shift from discretion to delegation at the EU level (BU5).

#### – *EP in-house expertise*

As some scholars have pointed out, lobbying action can be executed by trying to influence not only elected politicians but members of the EP secretariat who assist the MEPs in their task of obtaining objective facts in order to confirm or counter information provided by lobbyists themselves. An empirical research conducted between 2007 and 2010 by Marshall shows that MEPs most frequently define the EP's secretariat staff as first source for verifying lobbyist information.<sup>128</sup> These staff members being in most cases generalists, they lack of know-how and may rely also on lobbyists' information in order to advice the MEP, therefore directly providing lobby information to the MEP. This possibility of external influence will however not be considered further in this research due to the lack of data.

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128 David Marshall, "Do Rapporteurs receive independent expert policy advice? Indirect lobbying via the European Parliament's committee secretariat", in: *Journal of European Public Policy*, Vol. 19, No. 9, 2012, p. 1388.

– *Influence through the commissioning of external policy reports*

In order to increase their knowledge of relevant matters on their legislative work, the EP Committees order technical reports to external experts.

One report has been identified which the ECON Committee's secretariat has ordered externally on the SSM. It is a compilation of notes holding the title "Banking Union and a Single Banking Supervisory Mechanism" under the supervision of Nicolas Véron, Senior Fellow at the think-tank Bruegel. It includes an article by Véron himself, academics with a CEPR fellowship and an academic without a think tank background. This 71 pages document has been published in October 2012, some weeks after the publication of the Commission's proposal on the SSM. The executive summary of the first article states that it "provides recommendations for the purposes of the ECON Committee's deliberations".<sup>129</sup>

The question of accountability is raised at several points regarding the EP and in relation with the division between ECB monetary policy and supervisory functions.<sup>130</sup> Sylvester C.W. Eijffinger recognises here also a "trade-off between ambiguity and transparency" in the ECB's policy, which may change once it gains supervisory powers.<sup>131</sup>

The different articles consider the question of accountability and transparency as important, albeit the authors assign to it different levels of priorities. Due to the outstanding analytical reputation of the authors, the report has certainly been considered with great care by the MEPs. However, no particular information allows to conclude that the report had a special impact on the politicians' preferences. Similarly, it is not possible to assess if the authors have followed a specific agenda while drafting their report.

– *Influence through Committee hearings*

On 12 October 2012, ECON organised a hearing on the SSM proposals. Five persons were invited to hold short presentations to the Committee before a debate.<sup>132</sup> These were the Deputy Finance Minister of a non-euro area country, Poland, (for which no copy of the statement is provided by the EP); Andrea Enria, Chairperson of the EBA; Ignazio

<sup>129</sup> European Parliament, DG for Internal Policies, Economic and Scientific Policy, *Banking Union and a Single Banking Supervisory Mechanism*, PE 492.449, October 2012, p. 9.

<sup>130</sup> Ibid., p. 8 & 12.

<sup>131</sup> Ibid., p. 56.

<sup>132</sup> European Parliament, Committee on Economic and Monetary Affairs, *Public Hearing on Banking Supervision and Resolution: Next Steps? Programme*, Brussels, 10 October 2012. Available at: <http://www.europarl.europa.eu/document/activities/cont/201210/20121010ATT53331/20121010ATT53331EN.pdf>, (consulted on 06.05.2014).

Angeloni, the Director General of Financial Stability at the ECB; Raimund Röseler, the Executive Director Banking Supervision at the German Federal Financial Supervisory Authority and Professor René Repasi from the University of Heidelberg. This panel was in majority institutional, with two exceptions, and finds a balance between national and EU positions.

No speaker mentioned directly the question of the transparency of the SSM; however all of them, except Enria, evoked the issue of accountability with more or less emphasis. Repasi dedicated a whole section of his intervention to the necessary “unbroken chain of democratic legitimization” that the principle of democracy requires and calls for the participation of the EP in the SSM’s supervisory board.<sup>133</sup> Röseler mentioned briefly the necessity of parliamentary accountability.<sup>134</sup> Angeloni underlined the importance of accountability and that the “ECB is ready to comply with the highest standards of accountability for these additional tasks, in full cooperation with the European Parliament”.<sup>135</sup> A discussion with the ECON MEPs followed, which also addressed these matters.<sup>136</sup> As in the case of the report, the motivations of the speakers and the impact of the hearing on the policy preferences of the MEPs remain unclear.

– *Influence of interest representatives*

Considering that the power shift resulting from the establishment of the SSM is the one which has been the most important target of successful EP transparency amendment, it may be specially relevant to observe the action of external actors in their lobbying towards the EP during the legislative procedure and to assess their interaction, as the SSM has seen a real a combative position of the EP.

*Diffuse interests advocates with well defined goals*

<sup>133</sup> René Repasi, *Introductory Statement, ECON Public Hearing*, Brussels, 10 October 2012, p. 2. Available at: <http://www.europarl.europa.eu/document/activities/cont/201210/20121010ATT53380/20121010ATT53380EN.pdf>, (consulted on 06.05.2014).

<sup>134</sup> Raimund Röseler, *Committee on Economic and Monetary Affairs - Public Hearing on the Single Supervisory Mechanism proposals*, Brussels, 10 October 2012, p. 2. Available at: <http://www.europarl.europa.eu/document/activities/cont/201210/20121010ATT53335/20121010ATT53335EN.pdf>, (consulted on 06.05.2014).

<sup>135</sup> Ignazio Angeloni, *Public Hearing on Banking Supervision and Resolution: Next Steps?*, Brussels, 10 October 2012, p. 2. Available at: <http://www.europarl.europa.eu/document/activities/cont/201210/20121010ATT53385/20121010ATT53385EN.pdf>, (consulted on 06.05.2014).

<sup>136</sup> European Parliament, Committee on Economic and Monetary Affairs, *Public Hearing on Banking Supervision and Resolution: Next Steps?*, ECON/7/10820, Brussels, 10 October 2012. Available at: <http://www.europarl.europa.eu/ep-live/en/committees/video?event=20121010-0900-COMMITTEE-ECON>, (consulted on 06.05.2014).



Transparency International EU Office (TI EU) is the liaison office to the EU of the global advocacy organisation Transparency International. Among the goals it claims, it calls to overhaul the accountability and transparency of supervisors and regulators at the EU level.<sup>137</sup> It is represented in the Board of Directors of Finance Watch, an organisation striving “to break the dominance of the powerful financial industry lobby”, “regulate the financial sector effectively” and “protect the interests of the general public”.<sup>138</sup> TI EU declares between 800.000€ and 900.000€ for EU interest representation for the financial year 2012 in the EU Transparency Register,<sup>139</sup> while Finance Watch declares between 500.000€ and 600.000€.<sup>140</sup>

According to Katarzyna Hanula-Bobbitt, Public Affairs Officer at Finance Watch, even if the NGOs concerns include the questions of the architecture of banking supervision, Finance Watch, after a vote of its members, decided not take up the interest representation work on the SSM and to leave the lead to TI EU. However, if the matter was raised by an MEP during a bilateral meeting, FinanceWatch would brief the Parliamentarian accordingly.<sup>141</sup>

On 18 October 2012, TI EU published a position paper under the title “Improving the accountability and transparency of the European Central Bank” in which it the NGO believes that the “accumulation of influence and power [of the ECB] has not been matched by improvements in transparency and accountability”. It criticises that the Commission did not consider an increase of the transparency of the Bank compared to the Monetary Dialogue, while it gains important powers.<sup>142</sup>

Carl Dohen, the director of this campaign at TI EU, was not available for an interview during the drafting of this research in order to learn more about his activities. However,

137 Transparency International, EU Office, *EU Financial Sector*. Available at: [http://www.transparencyinternational.eu/focus\\_areas/eu-financial-sector/](http://www.transparencyinternational.eu/focus_areas/eu-financial-sector/), (consulted on 06.05.2014).

138 Finance Watch, *Why Finance Watch?* Available at: <http://www.finance-watch.org/about-us/why-finance-watch>, (consulted on 06.05.2014).

139 Europa, Transparency Register, *Transparency International Liaison Office to the European Union*. Available at: <http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=37943526882-24>, (consulted 07.05.2014).

140 Europa, Transparency Register, *Finance Watch*. Available at: <http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=501222919-71>, (consulted 07.05.2014).

141 Katarzyna Hanula-Bobbitt, Public Affairs Officer at Finance Watch, Telephone Interview, College of Europe, Natolin, 3 April 2014.

142 Transparency International, EU Office, *Improving the accountability and transparency of the European Central Bank*, Brussels, 18 October 2012, p. 2. Available at: [http://transparencyinternational.eu/wp-content/uploads/2012/10/2012-10-18\\_TI\\_ECB\\_position\\_paper\\_final.pdf](http://transparencyinternational.eu/wp-content/uploads/2012/10/2012-10-18_TI_ECB_position_paper_final.pdf), (consulted on: 07.05.2014).

the close link maintained between TI EU and Finance Watch<sup>143</sup> may imply that TI EU holds good relations to the MEPs that FinanceWatch is close to, that is, for instance, the ECON MEPs,<sup>144</sup> who together with their former colleague MEP Pascal Canfin, launched Finance Watch in 2010.<sup>145</sup>

Regarding the results gained by the EP on the SSM, Hanula-Bobbitt argues that the developments are positive and that the EP has been able to push for much transparency. She recalls favourably the postponement of the SSM vote by the EP in September 2013 in order to gain higher degrees of transparency on the ECB record of meetings.<sup>146</sup>

*Industry interests advocates weakly involved?*

Guido Ravoet, Chief Executive of the European Banking Federation (EBF),<sup>147</sup> the federation representing national banking association from 32 countries in Brussels, welcomed the final EP vote by declaring, in an official EBF statement, being “pleased that the vote was not further postponed”.<sup>148</sup>

This may be interpreted as, on the one hand, underlying the emergency of the situation on the financial markets requiring for the swift establishment of the SSM or, on the other hand, being relieved in the avoidance of a new postponement of the vote based on new transparency-related claims by the EP, which may be eventually risky for financial stability.

143 Transparency International, EU Office, *TI welcomes new coalition to bring about EU financial reform*, Brussels, 27 May 2011. Available at: <http://www.transparencyinternational.eu/wp-content/uploads/2012/08/2011-07-25-FinanceWatch.pdf>, (consulted on 07.05.2014).

144 Finance Watch, *Signatories*. Available at: <http://www.finance-watch.org/press/press-releases/344-signatories/> (consulted on 07.05.2014).

145 Euractiv, “Il faut un Greenpeace de la finance”, (Interview with Pascal Canfin), 2012. Available at: <http://www.euractiv.fr/economie-et-finance/interview/pascal-canfin-greenpeace-finance-13660.html>, (consulted 08.05.2014).

146 Valentina Pop, “EU negotiators agree on bank supervision”, EUobserver, 11 September 2013. Available at: <http://euobserver.com/economic/121382>, (consulted 07.05.2014).

147 On the EU Transparency Register, EBF declares around 4,5 million € for representation costs towards EU institutions in the 2013 fiscal year. See: Europa, Transparency Register, *European Banking Federation*. Available at: <http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=4722660838-23>, (consulted on 07.05.2014).

148 European Banking Federation, *EBF welcomes SSM vote at European Parliament*, Brussels, 12 September 2013. Available at: [http://www.ebf-fbe.eu/uploads/EBF\\_004187%20-%20Press%20Statement%20-%20EBF%20welcomes%20SSM%20vote%20at%20European%20Parliament1.pdf](http://www.ebf-fbe.eu/uploads/EBF_004187%20-%20Press%20Statement%20-%20EBF%20welcomes%20SSM%20vote%20at%20European%20Parliament1.pdf), (consulted on 07.05.2014).

Gonzalo Gasós, Senior Advisor for Banking Supervision at the EBF, does not share this last interpretation as he considers that there is no risk of leakage of systemic information though the EP in the framework of accountability provisions set by the EP-ECB IIA.<sup>149</sup>

Regarding the EBF's lobbying activities towards the MEPs during the legislative process for the adoption of the SSM, Gasós argues that the EBF did not approach Parliamentarians on this issue. To this regard a report published by the Corporate Europe Observatory (CEO) notes that Sven Giegold (Greens/EFA) received 11 requests by the EBF for meetings in a period of two years. However, the report does not state the period of time or the topics of these enquiries.<sup>150</sup> According to Gasós, the lobbying activities of the EBF on the SSM started towards the ECB during the elaboration of the SSM Framework Regulation, which lays the functioning of the SSM in more detail.

For Caroline Gourisse, in charge of supervision and capital requirements at the European Savings and Retail Banking Group (ESBG),<sup>151</sup> the SSM and the EP-ECB IIA were not matters of high engagement for the following reasons. Regarding the SSM, the existence of reluctant members towards the framework itself did not allow reaching a workable consensus in the ESBG. Therefore, the political message of ESBG was very weak. However, once the SSM was adopted and the technicalities were discussed, in the ECB SSM Framework Regulation for instance, the ESBG could achieve higher levels of commitment among members and actively lobby the ECB. In the case of EP-ECB IIA, the topic being of first range political relevance and negotiated at a very high level, it was out of reach for Gourisse. If any kind of external influence could be potentially achieved, very modestly and at a very high level, that would be through a personal contact of the Director-General of ESBG with the President or the Vice-President of the ECB. She also stated that for her personal activities, transparency of institutions is not necessary, as informal contacts with officials allow the information to flow.<sup>152</sup>

149 Gonzalo Gasós, Senior Advisor for Banking Supervision at the EBF, Telephone Interview, College of Europe, Natolin, 6 May 2014.

150 Corporate Europe Observatory, *The Fire Power of the Financial Lobby*, Brussels, April 2014, p. 9. Available at: [http://corporateeurope.org/sites/default/files/attachments/financial\\_lobby\\_report.pdf](http://corporateeurope.org/sites/default/files/attachments/financial_lobby_report.pdf), (consulted on 07.05.2014).

151 On the EU Transparency Register, ESBG declares around 300.000 € for representation costs towards EU institutions in the 2012 fiscal year. See: Europa, Transparency Register, *European Savings and Retail Banking Group*. Available at: <http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=8765978796-80>, (consulted on 07.05.2014).

152 Caroline Gourisse, Supervision and Capital Requirements at ESBG, Telephone Interview, College of Europe, Natolin, 2 May 2014.

Furthermore, both Gasós and Gourisse considered the European Parliament Financial Service Forum (EPFSF) as a forum for the exchange of ideas but where no concrete lobbying is conducted. This former intergroup gathering around 20 ECON MEPs, civil servants, researchers and industry representatives, including EBF and ESBG, organised on 5 December 2012 a meeting on the Banking Union proposals of the Commission. A representative of EBF was invited as a guest speaker. The briefing paper for the meeting available on the EPFSF's website does not mention issues of transparency or accountability of the SSM.<sup>153</sup>

Regarding interaction and coalition-building between banking sector interest representatives, the European Banking Industry Committee (EBIC) is worth to be noted. It is a platform which allows the industry to present a common position on a specific matter. In the case of the SSM, no common position was elaborated, which may reflect that the internal differences at ESBG also occurred between the different industry representatives.<sup>154</sup>

– *Chapter conclusions:*

With all due caution towards the data considered, this chapter has revealed that while having a lower transparency profile than other political groups, the EPP may, when voting with transparency advocate ALDE alone, produce legislation with higher levels of transparency than in cases of a grand coalition with the transparency friendly S&D. While Greens/EFA was keener to vote for legislation with EPP and ALDE, this did not lead necessarily to higher levels of transparency, despite the party's pro-transparency profile. Surely, other political priorities had a role on the bargaining process. The importance of the Council in the decision-making process, as a co-legislator, has been recalled.

Channels for external influence of policy formation have been identified. In the cases of influence over EP in-house experts or by external experts over MEPs (reports or hearings), the lack of empirical data has prevented the possibility of drawing conclusions. Regarding lobbyists, the comments stemming from interviews imply that they kept a low profile on the SSM legislation at the EP, for internal reasons especially. However, the second, more technical part of the game, the ECB SSM Framework Regulation, allowed them to have a more important input and probably, influence. This raises the

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153 European Parliament Financial Services Forum, *Towards a European Banking Union*, EPFSF Briefing, 12 Novembre 2012. Available at: [http://www.epfsf.org/images/stories/PDF/2012/121120\\_epfsf\\_briefing.paper.on.banking.union\\_clean.pdf](http://www.epfsf.org/images/stories/PDF/2012/121120_epfsf_briefing.paper.on.banking.union_clean.pdf), (consulted on 07.05.2014).

154 European Banking Industry Committee, Position Papers. Available at: <http://www.eubic.org/position20papers.htm>, (consulted on 07.05.2014).

question of the introduction of Article 6 (7) in the SSM Regulation<sup>155</sup> by the Thyssen report, which requires the ECB to “adopt and make public a framework for the practical implementation of cooperation within the SSM”. This amendment has probably allowed more lobby activity to be possible subsequently and underlines the complex stakes of transparency. This amendment, which can be considered as fostering transparency, may have allowed interest representatives to gain knowledge of the drafting of a framework with significant impact on the industry. Hence, transparency can raise accountability but can also open doors for interest representation.

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155 Council Regulation (EU) No 1024/2013, OJ L287/63, 29 October 2013.

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## Conclusion

The power shifts resulting from the new EU economic governance have raised the concern among scholars that the EU democratic deficit may have deepened again. Decreasing discretion at the national level leading to more delegation or rules at the EU or the national level trigger the question of democratic room of manoeuvre for policy and the risks of the agent following another agenda than the one for which it has been created by the principal.

Transparency is a social accountability enhancing tool and, therefore, also a legitimacy enhancing tool, which the EMU needs due to its particular transnational and recent formation. By being able to check and balance the activities of the agents and raise issues, the democratic link between agent and the principal is strengthened. This can happen through the EP for the sake of the public or by the wider public itself, if the relevant tools are introduced, as we considered transparency and binding social accountability in a broad sense.

Which other EU institution could be more adapted to increase transparency than the EP? Indeed, it has been ignored in many decisions which led to important power shifts in the EU economic governance, but it had the opportunity to make its voice heard as a co-legislator on matters of crucial importance in times of crisis. As the only directly elected institution and the champion of diffuse interests, it was of central relevance to assess the ability of the EP to achieve this goal, especially shortly before the European elections, as a growing number of EU citizens question the “added-value” of the EP in EU decision-making.

By assessing the types of power shifts on which the EP had to legislate, we were able to find out that the classifications ascribed in the literature were partly erroneous. The power shifts consisted even more of horizontal or diagonal shifts, to higher and/or non-discretionary levels of governance, than previously assessed, which made the importance of transparency even more acute.

The meticulous comparative research in the legislative reports of the ECON Committee and the final legislation allowed us to find out in which decision-making procedures the EP was able to pass higher levels of transparency requirements for fundamental governance changes in financial, fiscal and macroeconomic policy. The results showed that especially two Six Pack regulations included an important amount of successful transparency amendments: one reinforcing the Excessive Deficit Procedure and the other concerning the Surveillance and Coordination of Economic Policies. Concerned was raised about the low level of transparency requirements in legislations such as the newly implemented Macroeconomic Imbalance Procedure, for instance.

Other regulations with high levels of transparency were those establishing the Single Supervisory Mechanism. This ground-breaking development which allows for a central supervision of the financial sector, would have probably helped to avoid many tragic development of the crisis, would it have existed at the time. The power that the ECB gains through the implementation of this Mechanism should be accountable. In this sense the EP has been able, i.e. through the Inter-Institutional Agreement, to gain important scrutiny rights on the action of the ECB in its supervisory activities. Indeed, the Agreement entails that “comprehensive and meaningful record of the proceedings of the Supervisory Board that enables an understanding of the discussions, including an annotated list of decisions” shall be made available to the EP. These levels of transparency had not been reached before for the ECB, especially not on monetary policy.

In a further step, the allocation of the identified amendments to the different power shifts recognized in the first Chapter allowed to understand that the EP was able to introduce transparency-enhancing amendments most efficiently in case of diagonal power shifts, in case of horizontal power shifts and, in last position, in case of vertical power shift. The hypothesis advanced in this case is that the Council, as the second co-legislator, has allowed for less transparency when gaining discretionary power through vertical shifts, but has supported more transparency when its discretion was delegated to other institutions or constrained by rules.

The fact that the highest ratio of successful transparency amendments per power shift concerns diagonal shifts to delegation or rules at the EU level is probably not surprising. Indeed, it is the most distant from discretion at the national level. Both a diffuse interest representative as the EP but also the Council are keen to control their agents which may explain that the Council agreed on so many transparency amendments of the EP.

But even considering the successes of the EP, concerns remain. Many fiscal and macroeconomic legislative acts, especially regarding fines and their quasi-automatic



issuance, have not gained substantial transparency through the decision-making process. It was considered that this may be the result of the wish of the co-legislators to increase compliance, the first aim of this directives and regulations being the coordinate economic policies among Member States in order to avoid new crises. The lacking remains also regarding macroeconomic adjustment programmes.

The issue of compliance leads to the beginning of the last chapter of this work, where the influence of party politics was assessed. The hypothesis was launched that transparency amendments may be used as bargaining chips by the S&D in order to gain other political advantages on a legislation, unfortunately without enough empirical material in order to be able to confirm or invalidate it. The question of the practical influence of lobbyists remains also, especially regarding the hypothesis raised considering amendments which may have made ECB decision-making more transparent to the public but also to industry representative in their endeavours, showing the double nature of transparency.

This underlines the limitations of this work, which are very much based on a lack of a sufficiently numerous sample of legislation in order to confirm the results, and the low level of empirical data which may have allowed confirming or disconfirming several hypotheses which the development of the research revealed.

Further research should therefore concentrate in deepening an empirical approach in order to better understand the influence of EP politics, of the Council, of external and internal experts on ECON but also to observe the dynamics of trilogues, which remain obscure.

Another limitation of this study is the strong reliance on a quantitative approach which, in the context of this limited effort, does not allow for groundbreaking findings on the practical consequences of the adopted amendments. On this matter, it would be interesting to assess the concrete impact of these transparency amendments on the real level of transparency of the power shifts and institutions addressed by them. To which extent do they foster effective social accountability, be it through the EP or by the public itself? To which extent is the public more informed and more in control of its agent? Further steps may also lead to take a more sociological approach, which would allow investigating the level of perceived transparency among the wider public, which may remain low even if transparency requirements rise. Making transparency requirements have a tangible effect on the public and its conception of decision-making is, in this sense, essential.



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## Annex I

**SSM - Interinstitutional Agreement with the ECB  
EP negotiating team kick-off meeting  
Thursday 25 April - 11:30-12:30 - ASP 1G-3**

The Conference of Presidents endorsed on 18 April the ECON proposal on a mandate for the negotiations with the ECB on an Interinstitutional Agreement (IIA). ECON is thus now entrusted with the task of carrying out the negotiations, on behalf of the Conference of Presidents and under the political leadership of the President of the Parliament.

### **1. Way-forward**

It is suggested that a first meeting with the ECB - the composition of the negotiating of which is not clear yet - be organised on Monday, 13 May afternoon (TBC). The agenda of this meeting could be to discuss and possibly define both the timetable and the process itself.

Before such a meeting, the EP negotiating team could decide on/discuss the following issues:

- *Pace of negotiations*: this issue will also depend on the availability on the ECB side, but the EP could already think about a possible timetable (aim at weekly meetings? every second week?), and/or the option of written exchanges.
- *Material for negotiations*: should the EP come up with an outline for a draft IIA which would serve as a basis for negotiations? This outline would consist in bullet points rather than detailed wording.
- *Objective*: the agreement with the ECB could be based on political points, while the concrete drafting of the IIA could be done at later stage (i.e. possibly after the vote in plenary), through a written procedure and/or at technical level.

### **2. List of political priorities**

To be based on the possible elements for inclusion in the IIA (see annex).



**ANNEX: Possible elements to be included in IIA  
(sorted by topic<sup>1</sup>)**

**I. Guiding principles**

20. The ECB and the Parliament shall conclude appropriate arrangements on the practical modalities of the exercise of democratic accountability and oversight over the exercise of the tasks conferred on the ECB by this regulation. Those arrangements shall cover, inter alia, access to information, cooperation in investigations and information on the selection procedure of the chair. (Article 17(9))
19. An agreement shall be concluded between the European Parliament and the ECB on the detailed modalities of organising such discussions, with a view to ensuring full confidentiality in accordance with the confidentiality obligations imposed on the ECB as a competent authority under relevant Union law. (Article 17(8))
- 13./1. The ECB shall be accountable to the European Parliament (Article 17(1)). The ECB should be accountable towards the European Parliament as democratically legitimised institutions representing the European people (Rec. 34)
9. In order to carry out its supervisory tasks effectively, the ECB should exercise the supervisory tasks conferred on it in full independence, in particular from undue political influence and from industry interference which would affect its operational independence. (Rec. 38)
6. Organisational separation of staff ...should ensure that the exercise of the tasks conferred by this Regulation is fully subject to democratic accountability and oversight (Rec. 35a)
4. Any reporting obligation should be subject to professional secrecy requirements (Rec. 34)

**II. In camera meetings with Chair of Supervisory Board**

19. The Chair of the Supervisory Board shall hold confidential oral discussions behind closed doors with the Chair and Vice-Chairs of the competent committee of the European Parliament concerning its supervisory tasks where such discussions are required for the exercise of the European Parliament's powers under the Treaty. (Article 17(8))

**III. Access to information**

**a. Regular reporting**

2. Regular reporting to the Parliament (Rec. 34)

<sup>1</sup> Numbers of the elements in line with the list of elements included in the note to ECON Coordinators

14. The ECB shall submit on an annual basis to the European Parliament a report on the execution of the tasks including information on the envisaged evolution of the structure and amount of the supervisory fees (Article 17(2))
15. The Chair of the Supervisory Board of the ECB shall present that report in public to the European Parliament (Article 17(3))
27. The ECB shall, as part of the report referred to in Article 17, report in detail on the budget for its supervisory tasks. (Article 23(2))
29. From the entry into force of the Regulation the ECB shall send quarterly reports on progress in the operational implementation of the Regulation. (Article 27(2))

b. Specific reporting

21. The ECB shall report to the European Parliament and to the Council as to how it has complied with this provision (=separation from monetary policy function). (Article 18(2))
28. The amount of the fee levied on a credit institution or branch shall be calculated in accordance with the modalities defined, and published in advance, by the ECB. The amount of the fee levied on a credit institution or branch shall be calculated in accordance with the modalities defined, and published in advance, by the ECB. (Article 24(2))
10. On a regular basis the ECB will provide information how many staff members from the national competent authorities of the participating Member States are seconded to the ECB for the purposes of the SSM. (Rec. 40)

c. Responding to questions

3. Responding to questions by the Parliament in accordance with its Rules of Procedure (Rec. 34)
17. The ECB shall reply orally or in writing to questions put to it by the European Parliament (Article 17(6))
37. The ECB shall reply in writing to questions put to it by citizens of participating Member States

d. Hearings and meetings

16. At the request of the European Parliament, the Chair of the Supervisory Board shall participate in a hearing on the execution of its supervisory tasks by the competent committees of the Parliament (Article 17(5))
33. Frequency of public hearings of the Chair of the Supervisory Board (an annual hearing and additional hearings if needed; in particular more frequent hearings



in the start-up phase); where necessary senior staff should also make itself available for a hearing

- 34. Ad hoc staff meetings/briefings may be organised at the request of Parliament
- 39. ECB body to be established, including MEPs (from participating Member States), which is provided with privileged information (e.g. like to the Administrative Council of the BaFin which includes 5 Members of the Bundestag and monitors the management of BaFin and advises BaFin on issues related to its supervisory duties. In addition, it is responsible for deciding on the budget of BaFin)

#### e. Disclosure of information

- 36. Level of detail concerning disclosure to Parliament of information on individual institutions; all information related to a credit institution can be disclosed when that institution is being wound-up
- 30. Public disclosure of minutes of the meetings of the Supervisory Board and the Governing Council when meeting to discuss supervisory issues
- 38. Disclosure of any documents at some point in time

#### **IV. Cooperation in investigations**

- 5. Parliament may set up a temporary Committee of Inquiry to investigate alleged contraventions or maladministration in the implementation of Union law pursuant to Article 226 TFEU or exercise its functions of political control as laid down in the Treaties. (Rec. 34b)
- 11. Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) applies to the ECB. (Rec. 43)
- 20. The ECB shall cooperate sincerely with any investigations by the Parliament, subject to the Treaty. (Article 17(9))
- 35. Access to information on individual institutions needed in the framework of an investigation/inquiry by Parliament

#### **V. Information on the selection procedure of the Chair of the Supervisory Board**

- 7./22. The appointments for the Supervisory Board in accordance with this Regulation shall respect the principles of gender balance, experience and qualification. (Rec. 36 and Article 19(1a))
- 8./24. The Chair shall be chosen on the basis of an open selection procedure, on which the European Parliament and the Council shall be kept duly informed. (Rec. 36a and Article 19(2))

23. After hearing the Supervisory Board, the ECB shall submit a proposal for the appointment of the Chair and the Vice-Chair to the European Parliament for approval (Article 19(2))
25. If the Chair of the Supervisory Board no longer fulfils the conditions required for the performance of his duties or has been guilty of serious misconduct, the Council may, following a proposal by the ECB, which has been approved by the Parliament, adopt an implementing decision to remove the Chair from office (Article (19(2aa) first subparagraph)
- 25a. Following a compulsory retirement of the Vice-Chair of the Supervisory Board as a member of the Executive Board, pronounced in accordance with the ESCB and ECB Statute, the Council may, following a proposal by the ECB, which has been approved by the European Parliament, adopt an implementing decision to remove the Vice-Chair from office. (Article (19(2aa) second subparagraph)
26. For these purposes the European Parliament or the Council may inform the ECB that they consider that the conditions for the removal of the Chair or the Vice-Chair of the Supervisory Board from office are fulfilled, to which the ECB shall respond. (Article (19(2aa))
32. Procedures (including timing) for nomination, appointment and removal of Chair/Vice-Chair and 4 ECB representatives on the Supervisory Board

## **VI. Additional elements**

### **a. Code of conduct**

12. Following an examination of the need for a Code of Conduct by the Supervisory Board, the Governing Council shall establish and publish a Code of Conduct for the ECB staff and management involved in banking supervision concerning in particular conflicts of interest. (Article 16(2a))

### **b. Adoption of acts by the ECB**

31. Procedures (including timing) for adoption of ECB regulations/decisions, guidelines/recommendations to facilitate Parliament's involvement

### **c. Court of Auditors**

18. When the European Court of Auditors examines the operational efficiency of the management of the ECB it shall also take into account the supervisory tasks (Article 17(7)) (Note: this element could include a clarification of the cooperation between the Parliament and the Court of Auditors)
35. Access to information on individual institutions needed by the Court of Auditors in performing its duties

d. Codification of current practices and further clarification of the implementation of Article 284(3) TFEU on relations between the European Parliament and the ECB

40. Article 284(3) TFEU sets out a framework for the relations between the ECB and the European parliament. The negotiators could take stock of the experience so far in the implementation of this provision and seek to clarify issues such as improvements to Monetary Dialogue, selection of members of the ECB Executive Board, responses to written questions, including quality, comprehensiveness, timeliness and accessibility of answers given, the ECB's role in the Troika as well as in the Basel Committee etc. Furthermore, the ECB President being the ESRB Chair, the accountability experience with the ESRB (e.g. ESRB financial stability report) should also be borne in mind and clarified.



## Annex II

### EUROPEAN ECONOMIC GOVERNANCE EPP POLITICAL MESSAGE

The legislative package on economic governance is an important pillar to prevent future crisis and boost EU's competitiveness. Responsible budgetary and macro-economic policies have to be better assured for all Member States. Some irresponsible policies of governments with regard to high deficits and debts as well as macroeconomic imbalances have made certain countries extremely vulnerable in the current Euro crisis, with potential risks for themselves and the Euro zone as a whole. Economic growth and jobs for our citizens are put at risk because of that as well as due to the lack of structural reforms policies.

Those Member states that had the most prudent fiscal policies and growth strategies are now performing best. This is the proof that fiscal stability leads to growth and employment. EPP achieved to strengthen the SGP and to extend the scope in such a way as to avoid the emergence of problems at a very early stage, and hopefully never be put in a situation where sanctions become necessary. More emphasis has been put on the overall level of debt, as opposed to solely concentrating on the deficit. The Commission has got a stronger role throughout the governance process, and the scope for political back scratching has been reduced by making it more difficult for the Council to vote down a Commission decision.

The EPP wants to enhance the EU's competitiveness and convergence of economic policies amongst Member States, as well as strengthen our performance *vis à vis* our global competitors. To this end we need both a strong monetary union and a strong economic union, fully respecting the principles of our social market economy and fully using the potential of our internal market.

Taken together, this can serve as an adequate framework to deal with essential topics such as tapping the potential of the EU's single market, sustainable pensions systems, and structural reforms to boost employment as well as balancing security and flexibility on labour markets.

## **The EPP achieved an ambitious legislative EU governance package with:**

### **1. A strong SGP, essential to achieve growth and jobs and to prevent that the debt burden is put on our children and future generations.**

- The final outcome reflects the EPP-line with regard to fully respecting both the 3 % deficit and 60% debt limit. Strong criteria with regard to Member States obligations to achieve their medium term budgetary objectives, with a limited room for budgetary manoeuvre.
- EP raised ambition with regard to:
  - A stricter and better specified surveillance procedure with clear deadlines, reporting requirements for Member States and surveillance missions of the Commission in liaison with the ECB if needed.
  - A well elaborated approach on economic dialogue at EU level to enhance accountability, transparency and democratic legitimacy through dialogue with the EP throughout the procedure.
- Last sticking point was the EP's request to introduce the reverse qualified majority voting in the preventive arm of the SGP (in addition to the RQMV in the sanctions procedure) for the decision that 'no effective action is taken' by a Member State. The EP insisted on introducing the reversed qualified majority vote for this decision as this is the first step to opening up the sanctions procedure (with an interest bearing deposit) in case of non-compliance by a Member State. This is not in line with the Deauville agreement, and was therefore a sensitive issue in the Council.
- In the final compromise the reverse majority voting (9 out of 17 member states have to vote against instead of 12 out of 17 in case of reverse qualified majority) is introduced for this decision that 'no effective action has been taken'. In addition, for all the decisions in the SGP (both in the preventive and the corrective arm) the Council commits in the legislation to, as a rule, follow the recommendations and proposals of the Commission; if not an explanation will be made public and is part of the 'economic dialogue' in the EP.

### **2. An effective surveillance mechanism to prevent and correct macro economic imbalances with potential spill-over risks.**

#### **Achievements:**

- The outcome reflects well the EPP-line. The scoreboard is an instrument to identify possible macroeconomic imbalances, and triggers an in-depth

analysis associated with policy recommendations given to Member states and fines in case of lack of action on these recommendations.

- In the final outcome the approach is more elaborated with regard to:
  - Mentioning of certain indicators, with a clear focus on macro-economic issues.
  - Involvement of the EP in setting the indicators, but no delegated act.
  - A more elaborated economic reading of the scoreboard and an in-depth study-procedure where close attention shall be paid to developments in the economy with regard to growth, employment, convergence, productivity as well as the objectives of the growth and jobs strategy.
  - Respecting the right to negotiate and conclude collective agreements and to take collective action in accordance with national law and practices which respect Union law.
  - The introduction of the reversed qualified majority vote in the macroeconomic surveillance to establish that there has been no effective action taken by a Member State following a recommendation by the Commission.
- And furthermore:
  - An approach with regard to ‘intelligent symmetry’ pointing at both deficit and surplus countries, however stating that the need for policy action is “particularly pressing in MS showing persistently large current-account deficits and competitiveness losses.”

### **3. Stronger community method: a rule-based approach with a strong role for the European Commission.**

Achievements:

- A stronger role for the Commission in the surveillance of the Stability and Growth Pact and in the macroeconomic surveillance (see above).
- The introduction of the reversed voting system on key decisions in both procedures that no effective action has been taken.
- A well elaborated approach on economic dialogue at EU level to enhance accountability, transparency and democratic legitimacy through dialogue with the European parliament throughout the procedures, and also in the EU Semester.

- 4. The EU 2020 strategy should complement a strong SGP and be part of the governance package. The National reform programmes should serve as an integrated approach to reach the common and ambitious targets for growth and jobs.**

Achievements:

- On the proposal of the EPP the Semester is included in the legislative text. This opens up a better integrated surveillance aimed at fiscal sustainability and economic growth. It is explicitly stated that this should not lead to exemptions from the provisions of the SGP.

- 5. European economic governance should be more a matter of common concern and the responsibility of the Member States and their national parliaments should be enhanced in this respect. National ownership has to be strengthened, the objectives of the Stability Pact should be incorporated into national law, Member States should have strong and independent fiscal institutions as well as a high quality of statistics and control - all contributing to a well informed national debate.**

Achievements:

- Stronger wording on independent budgetary planning and statistics (we are still working on this to get it as strong as possible).
- Role of national parliaments and social partners strengthened throughout the package and the Semester.
- Addressing the issue of fraud on statistics including the introduction of fines.